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ENVIRONMENTAL ASSESSMENT BOARD

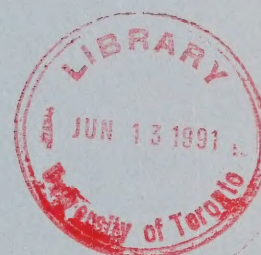
VOLUME: 313

DATE: Friday, May 24, 1991

BEFORE:

A. KOVEN Chairman

E. MARTEL Member



FOR HEARING UPDATES CALL (COLLECT CALLS ACCEPTED) (416)963-1249

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HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -

IN THE MATTER of a Notice by The Honourable
Jim Bradley, Minister of the Environment,
requiring the Environmental Assessment
Board to hold a hearing with respect to a
Class Environmental Assessment (No.
NR-AA-30) of an undertaking by the Ministry
of Natural Resources for the activity of
Timber Management on Crown Lands in
Ontario.

Hearing held at the Inn of the Woods Hotel,
470 First Avenue South, Kenora, Ontario,
on Friday, May 24th, 1991, commencing at
9:00 a.m.

VOLUME 313

BEFORE:

MRS. ANNE KOVEN
MR. ELIE MARTEL

Chairman
Member

A P P E A R A N C E S

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MR. R. LINDGREN)	
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MR. G.J. KINLIN		DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC		MINISTRY OF NORTHERN DEVELOPMENT & MINES
MR. M. COATES		ONTARIO FORESTRY ASSOCIATION
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MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

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I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
1853	Document entitled: Creation of Economic Under Development Among Treaty No. 3 Ojibway, Impact of Government Intervention, 1800 through 1880.	55404
1854	Three-page excerpt of Dawson notes.	55451
1855	Excerpt of pages 58, 59, 70 and 71 of Treaty 3 Agreement as described by Governor Morris.	55454
1856	Document entitled: Rainy River Sturgeon and Ojibway Resource and the Fur Trade Economy, reprinted from the Canadian Geographer, 1988.	55463

1 ---Upon commencing at 9:00 a.m.

2 MADAM CHAIR: Good morning.

3 MR. COLBORNE: Good morning.

4 MADAM CHAIR: Mr. Colborne, before we get
5 started, I neglected yesterday to introduce another
6 very important person who is associated with the
7 hearing, and that is Mrs. Victoria Maxwell. Could you
8 stand up please, Victoria.

9 Mrs. Maxwell is providing translation in
10 Oji-Cree in the event that anyone at the hearing
11 requires that service.

12 MR. COLBORNE: Thank you, Madam Chairman.

13 It happens that I know Mrs. Maxwell cause
14 she provided interpretation for me in a matter at one
15 time, so I am very aware of her capabilities.

16 Thank you for having her available.

17 MADAM CHAIR: Good. And you might tell
18 your clients if anyone wishes to use Mrs. Maxwell's
19 services, that we would certainly like them to do that.

20 MR. COLBORNE: Thank you.

21 MADAM CHAIR: And let's get started.

22 MR. COLBORNE: Very well.

23 TIM E. HOLTZKAMM,
24 LEO G. WAISBERG; Resumed

1 CONTINUED DIRECT EXAMINATION BY MR. COLBORNE:

2 Q. Mr. Waisberg, Mr. Holtzkamm,
3 yesterday you told us something about the agreement
4 known as Treaty No. 3. I would like you now to tell us
5 something about the economy and society of the Ojibways
6 who are considered part of the Treaty 3 agreement after
7 the Treaty; in other words, after the year 1873,
8 particularly insofar as it relates to the forest
9 industry and forest products?

10 So my first question to you will be:
11 Were forest products and timber utilized in the economy
12 that followed the Treaty and what changes in the
13 economy were reflected by that utilization?

14 MR. WAISBERG: A. Yes. Immediately
15 after the Treaty there was a large program commenced by
16 the Ojibway of construction of buildings and villages
17 on their new reserves and within a decade the picture
18 had changed to a number of settlements with many log
19 houses on each one, along with barns, stables, fencing
20 and some of the other pertinences of 19th century
21 agriculture.

22 So there was a large construction boom
23 among the Ojibway themselves in terms of their own
24 building following the signing of the Treaty.

25 Q. Where did the timber come from for

1 that construction?

2 A. There's no specific information in
3 the record as to where the timber came from, whether it
4 was from the reserves or whether it was from off the
5 reserves.

6 I believe at the time many of the
7 reserves had not been formally surveyed according to
8 the Indian agent and, therefore, it was difficult to
9 tell in many precise instances.

10 Q. And who did the construction
11 projects; who built these log cabins and barns and so
12 on that you've referred to?

13 A. The Ojibway themselves. There was -
14 unlike the situation further west where the federal
15 government funded a large program of experimental farms
16 and Indian farms - there was no similar program in
17 place in the Treaty 3 region for agricultural
18 assistance, there was the mere delivery of the
19 implements promised by the Treaty.

20 So there wasn't the large federal staff
21 as there were further west on the Prairies to assist
22 the Ojibways in their construction, there was merely
23 the local Indian agents.

24 Q. You mentioned a problem with surveys.
25 Was there any trespass problems or anything of that

1 type.associated with lack of surveys?

2 A. There were some trespass problems
3 with sites that had been located but not yet surveyed.

4 Q. Describe those; are we talking about
5 timber; are we --

6 A. Yes. There were some problems with
7 that. Prior to the survey, for example, at Wabigoon
8 and Eagle Lake Reserves there were complaints from the
9 Indian band that sites where they had located their
10 reserves to be surveyed but had not yet been surveyed
11 there were white men cutting.

12 Q. Were there any other problems with
13 white men cutting on Indian reserves?

14 A. Actually, yes. There were a number
15 of significant trespasses once the reserves had been
16 surveyed in the late 19th century.

17 They're dealt with on the report pages 73
18 and 74 and perhaps I could give a bit more information
19 about one of the more significant instances at Eagle
20 Lake in 1883.

21 Q. Where is Eagle Lake?

22 A. Eagle Lake is right near Vermilion
23 Bay and Dryden in northwestern Ontario. At the time it
24 was quite close to the route of the Canadian Pacific
25 Railway which was coming through and being constructed

1 through northwestern Ontario at the time, so it was the
2 centre of intense development and building and cutting
3 activity.

4 Q. And was there good wood on the Eagle
5 Lake Reserve?

6 A. Yes, there were significant stands of
7 pine on Eagle Lake.

8 Q. When you say significant, what does
9 that mean?

10 A. The surveyor estimated that there was
11 a good stand of pine on Eagle Lake sufficient to make
12 numerous ties for the railway construction.

13 Q. To some people a good stand would be
14 as big as this room, some people a good stand would be
15 as big as the bay of the lake outside.

16 Can you give us any idea of what a good
17 stand meant in terms of the Eagle Lake Reserve?

18 A. Well, in terms of the trespass that
19 eventually occurred, I believe the figure that came out
20 upon investigation by the Department of Indian Affairs
21 was approximately 2-million board feet.

22 Q. And how did that happen?

23 A. During the early winter of 1883 band
24 members came to Indian agent Robert Pither in Fort
25 Frances and informed him that there were trespassers

1 cutting on the reserve.

2 Mr. Pither, following the Indian Act,
3 proceeded to Eagle Lake, seized the timber and asked
4 Ottawa for instructions.

5 Following the instructions from Ottawa,
6 Mr. Pither was directed to release the timber to the
7 contractors as they had made promises to pay the money
8 to the band represented by the timber they had cut, and
9 these contractors were working basically for the
10 Canadian Pacific Railway and supplying timber and ties
11 for the construction of that railway.

12 Q. Was it just an accident that they cut
13 on the reserve?

14 A. At that time the reserve boundaries
15 had just been surveyed and were clearly marked and
16 blazed. The surveyor was asked about this at the time
17 and he reported that it was quite definitely, as far as
18 he was concerned, a case of deliberate trespass.

19 Q. And whatever happened with that case?

20 A. Following the promise by the
21 contractors to pay the band, the timber was released
22 and sold.

23 Eventually the contractors did not pay.
24 At that time the Department of Justice and the
25 Department of Indian Affairs decided that they should

1 sue the contractors. The case was started but, for
2 some reason, it was never brought forward to trial.

3 Q. And whatever happened ultimately, if
4 anything?

5 A. Ultimately the band, of course,
6 received no money for the timber that had been taken
7 and the case, when next Indian Affairs examined the
8 situation -- incidentally, when they attempted to
9 follow up on what had happened to the court case that
10 had been started approximately 1887, the date was 1896,
11 some time past, and there was a memo to the Department
12 of Justice in the Indian Affairs file asking for
13 information on what had happened.

14 The response from the Department of
15 Justice was that the case had been put by upon the
16 instructions of the Department of Indian affairs,
17 however, by this time there had been numerous staff
18 changes in the Department, there was a new federal
19 government in Ottawa, and the file basically ended at
20 that point, therefore, the band lost all of the revenue
21 from that timber that had been initially cut and
22 trespassed, seized and then released upon payment of --
23 upon the promise of payment, but the promise of payment
24 did not -- was not actually fulfilled.

25 Q. Did they ever get any kind of

1 compensation?

2 A. There was a claim brought forward
3 under the specific claims process recently and I
4 believe that the band received a payment in settlement
5 for this claim of about \$450,000.

6 Q. Do you know anything about the
7 relationship between that sum and the value of the
8 timber?

9 A. At the moment I can't recall the
10 precise value that was put upon the timber in the
11 band's statements; however, I do believe that with
12 interest, based upon a deposit of what the band should
13 have received at the time, the band claim was for much
14 more than \$450,000.

15 Q. Were there other reserves where
16 trespass occurred?

17 A. Yes, there were other reserves and I
18 believe we mentioned some of them in the report, Rat
19 Portage, Whitefish Bay, Big Island.

20 Q. Is there anything about the locations
21 of those reserves which made them vulnerable to cutting
22 and trespass?

23 A. They were close to areas where there
24 were development of the forest industry.

25 Q. And were there effective measures

1 taken to protect on-reserve timber stands from this
2 trespass?

3 A. There were very effective laws -- or,
4 pardon me, there were very strict laws in place and
5 very strict regulations in place through the Indian Act
6 and through the departmental timber regulations at the
7 time that provided for very significant penalties for
8 trespass on the order of I believe \$20 a tree, \$4 for a
9 shrub, and so on and so forth.

10 And as I just mentioned regarding Eagle
11 Lake, the Indian agents, when issues were brought to
12 them, did attempt occasionally to seize the timber,
13 however, there were cases where Indian agents, when
14 they took actions, were not able to bring the issue to
15 a close.

16 In the case of Eagle Lake they seized the
17 timber but were directed to release it. In other
18 cases, as we noted on the report on page 73, there were
19 problems with the prosecution of the offenders and
20 convictions were not able to be achieved for one reason
21 or another.

22 According to the report of the agent in
23 Rat Portage, the Indians of Whitefish Bay in 1882 are
24 also aggrieved at having their reserves robbed of the
25 900,000 feet of the choicest pine lumber the same

1 winter by Macaulay.

2 The Indian agent wrote then that the.

3 "The Indian is defrauded of his most

4 valuable inheritance by the cupidity of

5 the unscrupulous lumbermen."

6 And continued on in that vein for some

7 time. The Indian Affairs administration was somewhat

8 thin on the ground in the field in Treaty 3.

9 Q. How many people would we be talking
10 about here?

11 A. You had basically an agent at Fort
12 Frances and at Rat Portage, now Kenora. The agent for
13 communities like Savant, Dryden, Wabigoon, Eagle after
14 about 1884 was located at Port Arthur.

15 Q. So we're talking about two people?

16 A. Basically two people in the region,
17 but they didn't have administrative responsibility for
18 all of the reserves in the region. One of them was
19 delegated to the Port Arthur Indian agent who had to
20 take a train.

21 There was also a medical attendant who
22 was basically a fee for service employee, there were
23 other -- there was a Dominion constable who would
24 assist, there was an interpreter, but that was
25 basically the extent of the Indian affairs staff on the

1 ground.

2 At this time Indian Affairs, for reasons
3 of economy, had an extremely strict centralization of
4 authority.

5 Q. Now, the lack of personnel, I take
6 it, that you are mentioning in relation to
7 non-enforcement of the regulations against trespassing
8 and taking timber from Indian reserves; is that right?

9 A. Mm-hmm.

10 Q. That taking of timber without
11 authority and without payment, did that have any effect
12 on the Ojibway economy in the period immediately
13 following the Treaty; say until the end of the 19th
14 century?

15 A. Well, one of the things, of course,
16 that the sales of timber was supposed to provide was
17 revenue for band trust fund accounts. If the prime
18 timber in those days - red and white pine, large stands
19 of good commercial jack pine - if these were taken, the
20 bands lost significant forest reserves from their
21 reserves without compensation.

22 This is one of the reasons why I believe
23 there was such strict provisions in the Indian Act and
24 in the Indian timber regulations, the problem was
25 translating those strict provisions in all cases into

1 actual action.

2 Q. I would like to ask you a few
3 questions about what the Ojibways did within the timber
4 industry at that time and, again, I will ask you to
5 refer to the period between 1873 when the Treaty
6 agreement was made and the turn of the century?

7 MR. HOLTZKAMM: A. I would like to
8 comment on that a little bit, particularly in terms of
9 their employment in the 19th -- the last quarter of the
10 19th century timber industry.

11 We don't have tabular listings of who was
12 employed doing what, but we do have a number of
13 qualitative statements which indicate -- which describe
14 large numbers of Ojibway working for the forest
15 industry.

16 For example, in 1895 the medical officer
17 in the Fort Frances agency report and he inferred
18 employment from his own records. He stated:

19 "Numerous accidents, especially axe
20 wounds, while none of these have been
21 fatal yet it proves that our Indians are
22 in constant demand as woodsmen and lumber
23 and tie manufacturers."

24 In a somewhat more straightforward vein
25 in 1895 the Rat Portage agency medical report states:

1 "The Indians of my district are in a more
2 prosperous condition. A better class
3 of house is being erected by them. They
4 are also adopting the ways of the white
5 man more and more. Large numbers of them
6 are being employed in the mines, in the
7 lumber camps and at the fisheries for
8 which they receive good wages, thus
9 enabling them to purchase food and
10 clothing sufficient for their wants."

11 Now, I might add that employment in the
12 mine, since a lot of the equipment was steam powered
13 often consisted of cutting cord wood to provide heat
14 water to provide steam.

15 So there were large numbers of Ojibway
16 working in Treaty No. 3 during this period earning good
17 wages as perceived by the agent at the time and using
18 it for their material benefit. They were employed
19 cutting cord wood as woodsmen and in lumber and tie
20 manufacturing.

21 A number of reserves that were affected.
22 If you look at them over time, most of the reserves are
23 covered at some point or another under statements of
24 this kind of employment. The nature of the records is
25 such that the Indian agent may not have thought it

1 appropriate to comment on this for each individual
2 reserve as he went through, it was more anecdotal.

3 Some of the reserves that were affected
4 were those that were particularly near centres of our
5 Euro-Canadian development where industry was more
6 common, but I might point out that this does not
7 necessarily conform to what we think of as centres of
8 the industrial development today.

9 For example, the Sturgeon Lake reserve in
10 the heart of the Quetico Park, what became the Quetico
11 Park later, during this period was the centre of
12 employment where the Ojibway were cutting cord wood for
13 the Jackfish gold mine.

14 Now we would tend to think of that as an
15 isolated wilderness area; at the time it was a centre
16 of development, and all of these activities generated
17 considerable income for them.

18 Q. And the income that was generated,
19 what effect did that have on the economies of the
20 reserve communities?

21 A. Well, for one thing, as we have
22 already considered, there were a number of impacts on
23 the reserve communities themselves due to natural
24 resources being depleted in other areas.

25 Q. Actually that's what I'm getting at.

1 - You have told us previously about the more traditional
2 Ojibway economy, the rice, the fish, the game, the
3 agriculture. Does this wage economy or income from
4 wage labour, is this a major new factor and, if so, is
5 anything happening with the old statements of the
6 economy?

7 A. Did you want to pick that up or shall
8 I continue on that?

9 MR. WAISBERG: A. You continue with
10 that.

11 MR. HOLTZKAMM: A. Okay. The major
12 impact, of course, was the flooding generated by power
13 dams. It flooded -- destroyed many of the natural
14 resource sectors, so that during this period wild rice
15 was being destroyed, the gardens on which they had
16 pinned much of their faith during the Treaty
17 negotiations and gained income from even prior to that
18 were under water.

19 I believe Mr. Waisberg mentioned the fact
20 that the agent or the inspector commented on rowing a
21 boat over the site of some of the former gardens in
22 Treaty No. 3.

23 So that gradually, due to this type of
24 activity, resources they had counted on were being cut
25 back. Fishing was becoming impacted by commercial

1 activities by non-Ojibway, sturgeon were becoming
2 depleted, their catches were dropping off, so that they
3 were forced to turn to other areas for income to
4 replace what had been lost.

5 If you can't gather wild rice you have to
6 perhaps buy flour or corn meal or something; or if you
7 can't grow corn in your gardens, you have to buy
8 substitute from retail stores.

9 Something else that impinged upon this
10 were their continued complaints regarding the provision
11 of Treaty farming implements. The Chiefs had the
12 understanding that those would be replaced over time --
13 or added to over time as new families came along and
14 needed help with farming.

15 They wore out, many cases they were of
16 insufficient quality or inappropriate, the animals that
17 were furnished for domestication were not -- well, they
18 were - in terms of one inspector as wild as caribou and
19 took off for the woods as soon as they were brought in.
20 These were all inappropriate.

21 So, because of dissatisfaction with that,
22 they began to switch to other activities, and then of
23 course flooding came along.

24 MR. WAISBERG: A. Actually if we could
25 go back to the flooding issue, we could see a very

1 concrete example of this switching from one area of
2 resources to another.

3 It was ealt with extensively in the
4 records, again, because the Department of Indian
5 Affairs at the time of the first flooding of Lake of
6 the Woods in 1887 with its impact, particularly upon
7 rice, gardens and hay, was very concerned about having
8 to expend large sums of money to subsist the Ojibways.

9 They asked the agent to prepare various
10 reports and the headquarters were alerted to the fact
11 that there might have to be significant expenditures of
12 funds.

13 However, in 1888, the year after the
14 flooding when the wild rice was first destroyed and the
15 Indian agents have been expressing their concern, the
16 Indian agents reported that:

17 "The Indians did not suffer for want of
18 food. Those who passed the winter in
19 places where game was plentiful and lived
20 on venison and managed to get through the
21 winter better than I expected they would
22 at the commencement of the season, while
23 those who were willing to work got work
24 in lumbering camps and in cutting cord
25 wood for steamers."

1 So there was some replacement from the
2 traditional activity of ricing to other activities both
3 on the land for big game hunting and through the wage
4 economy.

5 MR. HOLTZKAMM: A. Did you cover
6 trapping in there again? There seems to have been an
7 increase in, one, the availability of animals due to
8 population cycle changes at that time. As well, the
9 fur prices rose, so that became an important factor.

10 Now, in addition to that, the fact that
11 the Hudson's Bay Company was being replaced, there were
12 more traders and independent retail stores were
13 available, the prices that they would have had to pay
14 for products such as flour, if it had to have been
15 brought in by the canoe brigades of the earlier period,
16 it would have been prohibitively expensive.

17 Prices for things had dropped, so that
18 the income generated from trapping had a greater
19 impact. They could drop by more trade goods with that,
20 as well as the price of furs is rising, so trapping
21 became much more lucrative for them during some of this
22 period.

23 Q. You've mentioned the availability of
24 wage labour, logging, for whatever purpose the logs
25 were used, and you have mentioned the flooding caused

1 by the dams.

2 Was there any other major impact on the
3 economic activities of the Ojibway under Treaty 3
4 relating to logging for the forest industry in that
5 late part of the 19th century, or are those the two
6 main effects?

7 A. The main ones. There was some
8 pollution related with the paper industry.

9 Q. No, I'm talking about the late part
10 of the 19th century?

11 A. That wasn't -- that was just becoming
12 a factor.

13 Q. Yes. I would like to turn now to the
14 20th century, and I would like you to describe in
15 general terms the trend in the economy of the Treaty 3
16 Ojibways, particularly employment during the 20th up to
17 1950?

18 A. Okay.

19 Q. The end of the period that we've
20 defined as being the historical period and subject to
21 your expertise, but the trends as they relate to the
22 timber industry.

23 A. Okay. Initially during the 20th
24 century, during the very opening years, it seems to
25 have been some general -- a general tendency to have

1 increased employment in the forest industry. This was
2 a continuation of the 19th century phenomenon. Within
3 a few years it began to drop off relative to other
4 activities.

5 In other words, if I were to characterize
6 the period as a whole, initially it began to increase
7 then relative to the income generated from other
8 sources there's a declining sense of opportunities for
9 Ojibway to participate in the forest industry as a
10 whole.

11 They were working more in the off-reserve
12 economy cutting timber for large companies in the
13 general forest industry during the 19th century and, as
14 we move into the 20th century and get beyond the
15 opening years, that part declines.

16 To a large extent this seems to have been
17 due to a degree of ethnic bias on the part of employers
18 in the forest industry because of cultural differences
19 and maybe just outright bias.

20 In many cases the Ojibway were not seen
21 as the best employees that could be obtained, they
22 usually wanted good wages and the cultural difference
23 posed some problems; as well, some people just didn't
24 want any Indians working for them.

25 This is mainly apparent in Indian affairs

1 records which we have consulted that deal with this
2 point. We have not gone largely -- or at least I have
3 not gone largely outside of that, with the exception of
4 a forest study of the logging industry in northwestern
5 Ontario in which describing employment preferences it
6 states Indians were at the bottom of the heap after
7 listing other ethnic groups.

8 Because of this general down-swing in
9 employment for Indians in the general forest industry,
10 they began to concentrate more intensively upon
11 on-reserve activities. The cutting of what is called
12 dead and down timber or fire damaged or dry wood timber
13 became an increasingly important aspect of the reserve
14 economy as the Indians and the Department of Indian
15 Affairs began to rely upon the cutting of this wood as
16 a means of relief to substitute for other forms of
17 unemployment -- of employment which were becoming
18 unavailable.

19 They are concentrating, again, more
20 intensively upon the reserve timber and cutting the
21 less valuable dead and down timber through a permit
22 system from the Indian agent.

23 As well, the surrenders of green timber
24 became important as a means of providing funds for
25 relief.

1 Q. What is green timber?

2 A. Living timber. It's more valuable
3 than the dry wood.

4 Q. You said surrender of that. Can you
5 just explain what you are referring to in terms of the
6 technical process?

7 A. It was a process through which the
8 Indians formally surrendered the timber to the control
9 of the Department of Indian Affairs which would then
10 manage the timber, letting it out for bids; that is,
11 for sale, to non-Indians and the monies from that would
12 be placed in Band accounts to be administered by the
13 Department of Indian Affairs.

14 Q. Was there a lot of that in the
15 early --

16 A. Yes, that was strongly encouraged by
17 the department itself. In many cases -- at least one
18 case, the Department of Indian Affairs' timber
19 inspector, H.J. Burrie, went on record as stating he
20 disapproved of any Indian cutting on the reserves, he
21 preferred to have it all sold.

22 Q. So the pattern was, if I understand
23 you correctly, the green timber, the live standing
24 timber was -- there was encouragement that it be
25 surrendered and sold?

1 A. Correct.

2 Q. Whereas the dead and down timber
3 on-reserve was being used as a form of relief?

4 A. Yes.

5 Q. And the right to cut it was given to
6 individual Indians...

7 A. Through a permit system.

8 Q. Through a permit system so they could
9 make some money so they could live?

10 A. Right. Now, there is a basic
11 distinction as well from an Indian standpoint in this
12 in that if the Indians cut dry wood under a permit,
13 although it was less valuable, being perishable and
14 subject to all kinds of damage and doesn't last on the
15 tree for long unless it is cut into lumber, that money
16 went directly to the Indian cutter himself. You know,
17 he could sell the timber or the wood that he had cut
18 under that permit.

19 On the other hand, if the timber was
20 surrendered, that money was doled out not according
21 necessarily to the Indians' desires, but according to
22 the dictates of the Department of Indian Affairs which
23 controlled the accounts. It might have been used for
24 administration, not necessarily in the ways the Indians
25 would have preferred.

1 Q. Were there instances where individual
2 Bands preferred to cut their own timber rather than
3 surrender it in a block for sale?

4 A. Yes, they were instances of this
5 type. A particular one that comes to my mind is the
6 Assabaska Band around 1930 where they preferred to
7 conserve their resources; cutting just enough of the
8 timber, and they were trying to get permission to cut
9 all kinds of timber, to generate a steady income rather
10 than surrendering it to get a big cash influx into the
11 accounts and to rely upon that.

12 They preferred to have control of that
13 themselves, cut small amounts every year as a means of
14 supplementing other source of income. It was a problem
15 because the Department of Indian Affairs at the time
16 was actively encouraging them to surrender their
17 timber.

18 Q. Have you been through the Department
19 of Indians Affairs files on this? Is that where you
20 are getting this information?

21 A. Yes.

22 Q. You used the phrase "trying to get
23 permission" and I will like you to expand on that.

24 If you were a member of the Ojibway
25 community, say, in the 20s or 30s and you wanted to get

1 permission to do something with respect to wood on your
2 own reserve, what would you do.

3 What would the process be? Are you
4 telling me that you just can't go out with a saw and
5 cut it down?

6 A. Well, actually that was done at one
7 point at Couchiching reserve. I think this goes back
8 to -- I'm not sure of the exact date on this, but the
9 Indians went out apparently, according to the agent,
10 cut the timber and then decided: Oh, we better get a
11 permit for the construction on their own reserve. We
12 had better get a permit for this.

13 There were in some hurry because they
14 knew there was bureaucratic lag. Permits had to be
15 approved by the Department of Indian Affairs first in
16 Ottawa.

17 So they went and cut the timber because
18 the ice was beginning to go out in the lake and it
19 would be hard to get it out of the woods, and then
20 applied for it and were given a strong lecture by the
21 agent and then admonished -- or they promised: We
22 won't do that again, and were given -- the agent
23 approved the permit.

24 So there was that as an instance. They
25 did have problems with that. As well, at Whitefish

1 Bay, the Chief obtained a permit for cutting timber to
2 build on his own -- build a house on the reserve and
3 was later under suspicion from the Indian agent because
4 he had built not just a regular house, but a large
5 house and was renting out rooms to loggers as a
6 stopping place and generating income from it. The
7 agent felt this was very improper to be generating
8 income this way, but he didn't see how -- he was told
9 that there was no way that it could be prevented. He
10 felt it was a misuse of the permit.

11 Q. So the permission, literally how
12 would one get it? Would one have to travel to where
13 the agent was and ask for something?

14 A. Yes. It was occasionally done that
15 the Chief would write to the agent. The agent would
16 then have to recommend the permit be approved, send it
17 to Ottawa and get the authorization.

18 So there was a considerable time lag
19 between requiring the need for the permit, asking
20 permission, going through the steps and finally getting
21 it. It was not a simple process.

22 Q. Did the agent at that time have
23 scientific knowledge about the tree stock that was
24 available on the reserves? What we would call that
25 type of knowledge today?

1 A. I would have to say no, definitely
2 not. Just to give you an idea of how uncertain some of
3 these situations were. At Big Island in the first
4 decade of the 20th century the Indians complained of --
5 this is a trespass issue, but it addresses that
6 question. The Indians complained of forest trespass.
7 The agent went out and looked at the reserve, found
8 what he thought was the boundary marker and said: No,
9 it doesn't appear that any trespass has occurred. The
10 Indians are making up a story and recommended that they
11 be penalized.

12 A few years later, the land surveyor in
13 his work on Big Island noted that the survey marker had
14 been moved in on the reserve about half a mile. So
15 that apparently a large trespass had occurred. The
16 Indian agent went out and looked at it and did not even
17 that the boundary marker had been moved about half a
18 mile in on the reserve. I would say this indicates
19 that he didn't have very good knowledge of the timber
20 resources.

21 MR. WAISBERG: A. If I may just add
22 something to that. There was a timber inspector
23 attached to the staff of the department for many years;
24 however, he was attached to the central office.

25 It was only beginning in the 1920s that

1 formal surveys of the timber resources on each reserve
2 were begun by active agents in the field who would
3 compile reports so there was definite information about
4 the resources on the reserve. This was the 1920s after
5 basically 40 years of cutting.

6 MR. HOLZKAMM: A. There was an
7 accumulation of knowledge over time, but referring to
8 the earlier parts of this period, no.

9 Q. The cutting under large contracts
10 following surrender, was there a lot of that or is that
11 just a few odd examples?

12 Can you quantify it in any way or
13 generalize about it?

14 MR. WAISBERG: A. There were a fair
15 number of surrenders of timber in the 20th century at
16 places like Assabaska, Wabigoon, Eagle.

17 Unfortunately, they were numerous
18 problems that would come to light in these operations
19 and unfortunately they would only come to light
20 gradually because of the lack of inspection by trained
21 foresters or by the Indian agent even.

22 In one particular case at Wabigoon, for
23 example, the Band surrendered its on-reserve timber in
24 1907 and a company bid for it and acquired the rights
25 and commenced operations and they would make returns

1 into the Department of Indian Affairs of the amount of
2 timber they had cut.

3 The regulations basically told how this
4 was to be done in terms of oaths and the proper forms
5 to use. The company was always in breach of these
6 regulations for numerous years after 1907, but it was
7 not until 1916 that a timber inspector was actually
8 retained by the department and sent out to examine the
9 operations of 1915 and '16.

10 Upon investigation, he reported back to
11 the department that during that winter's operations of
12 1915 and '16 the company had cut timber that was much
13 too small. The company according to the timber
14 regulations was only supposed to cut timber that was
15 more than 10 inches in diameter and I believe 18 inches
16 above the ground. This was a conservation measure to
17 protect young timber.

18 He found upon investigation that they had
19 cut in that year, 1915 and '16, about 50 per cent of
20 their timber undersized. At that point, there was an
21 examination of the previous returns from the years
22 prior to 1915 and '16 and it was found that when you
23 look at the very carefully scaled returns that there
24 was a probability that much of the previous cut had
25 been undersized.

1 At that point, with the company
2 definitely in breach of the timber regulations, the
3 licence was cancelled. However, there were no
4 penalties applied.

5 Q. That's an example of a problem. I
6 think you introduced it as such.

7 Are there other examples of problems
8 associated with timber operations on reserve lands
9 during this period we are talking about, the first half
10 of the 20th century?

11 A. There are other instances in the
12 literature of the department -- pardon me, in the files
13 of the Department of Indian Affairs where there were
14 complaints and investigations of the proper scaling,
15 improper clean-up of operations after the cutting of
16 the timber; in other words, leaving a lot of slash in
17 the bush.

18 There were also complaints of the failure
19 of the Department of Indian Affairs to disperse the
20 revenue from these timber surrenders to the Bands. We
21 have to remember that one of the inducements to
22 surrender the timber was to make a fair amount of money
23 so that there would be available in the Band trust fund
24 accounts money for -- per capita distributions to each
25 Band member. Therefore, when this money was not

1 forthcoming there was suspicions and complaints.

2 So basically when you look at the
3 surrenders and the subsequent operations on many of the
4 reserves that did have the surrenders, you would find
5 numerous instances of either what were alleged to be
6 improper wood cutting activities or complaints of such
7 and I believe there was some referred to in the
8 report.

9 Q. Any other problems?

10 MR. HOLZKAMM: A. Yes. Well, it's not
11 strictly with surrendered timber lands. There were
12 occasions, and it relates to a Treaty promise of
13 free -- passage, their ability to move around the
14 country. The Indians complained that the logs from
15 cuttings were blocking the rivers so they couldn't get
16 through and the Department of Indian Affairs complained
17 to the timber companies who promised to try to avoid
18 that situation.

19 Q. I'm not sure, but I think Mr.
20 Waisberg touchd on this, but I will ask it again if he
21 did. What were the factors that caused the cutting of
22 the green timber; that is, I suppose the good stands of
23 timber, to be done by persons other than the Indians
24 themselves?

25 A. To be caused by persons other than

1 the Indians themselves?

2 Q. To be done --

3 A. Or to be done by --

4 Q. Other than the trespass situation and
5 so on.

6 A. Well, to some -- I've mentioned the
7 ethnic bias. In --

8 Q. Excuse me. I probably haven't been
9 clear in the question. I am talking about the
10 on-reserve timber.

11 A. Why were they surrendered rather than
12 cut by permit, is that what the question is?

13 Q. Why were they cut by non-Indians
14 rather than Indians?

15 Why didn't the Indians of the reserve
16 communities at the time -- why were they not able to
17 cut their own timber?

18 A. Okay. I think I understand what you
19 are asking.

20 In 1916, I mentioned this previously, the
21 Department of Indian Affairs timber inspector, H.J.
22 Burrie, stated that he felt that it was inappropriate
23 for Indians to be cutting timber.

24 I believe I have the reference if I can
25 find quickly. He essentially suggested that all timber

1 be surrendered for sale rather than allowed to be cut
2 by Indian people. So it was the Department of Indian
3 Affairs' preference for surrender and the generation of
4 money.

5 As well, the Indians were pressured to
6 surrender timber rather than cut it themselves on a
7 continuous basis to get it all cut at once because they
8 were assured that, one, if they surrendered the timber
9 they would have perhaps a preference in employment
10 which did not always materialize for various reasons.

11 Frequently, the wages paid were so low
12 that they could not come out ahead working for the
13 timber companies, that everything was used up in
14 advances from the company stores.

15 As well, they were told that there was a
16 threat of loss of the timber by fire or trespass; in
17 other words, it would be better to surrender the timber
18 and have it sold, have the money in bank where it was
19 safe rather than a risk of fire or insect damage or
20 from trespass. If you don't surrender your timber you
21 run the risk of having it stolen.

22 Does that address what you were asking?

23 Q. Yes. Again, referring to the first
24 half of the 20th century, you have already mentioned
25 flooding as a problem, but other than that, factors

1 that are connected with the timber industry, were there
2 others that affected economic development for the
3 Treaty 3 Ojibway communities?

4 A. One of the significant ones that we
5 have already talked about was the pollution from pulp
6 and paper mills.

7 At Fort Frances, I believe the reference
8 is 1913, the Rainy River Bands complained that the
9 dumping of garbage from the pulp and paper mill - it is
10 actually garbled. It comes out cartages, but the
11 intent of the word is clear - polluted the river,
12 destroyed the fish and rendered the drinking water
13 unpotable, unsanitary.

14 So that they were requesting both
15 compensation for the damage and the loss, as well as
16 wells to be dug because they could no longer drink the
17 water safely.

18 Q. Were there other locations where
19 pollution --

20 A. On the Winnipeg River below Kenora
21 and the Dryden area, the Wabigoon/English River system.

22 As a matter of fact, in one account the
23 Indian trapper refers to pollution -- or the effects of
24 pollution on the English River/Wabigoon River system as
25 destroying the mink and otter on these traplines.

1 To go further into that, there were other
2 things that effected the economic development of the
3 Treaty No. 3 Ojibway, at least as it has been
4 anticipated as we have testified around the period of
5 Treaty. I have a pamphlet here I would like to quote
6 from. I believe we have copies.

7 Do you want to introduce this at this
8 time? I would like to...

9 Q. This has to do with which topic?

10 A. The restriction of resources. Are
11 you ready for me to go ahead on that, the restriction
12 on their access to resources.

13 Q. Okay. Actually, what I would like to
14 do first, though, is ask you about any further
15 connection between the forest products industry and the
16 Treaty 3 Ojibway economy.

17 We have dealt with flooding caused by
18 dams and we have dealt with pollution. Were there any
19 other major factors, major connecting factors between
20 the forest industry and the economy of the Treaty 3
21 Ojibway communities as it evolved in the first half of
22 the 20th century?

23 A. I have testified as to the reduction
24 of employment opportunities and, as well, we considered
25 earlier in relationship to traditional economic

1 activities the effect of cutting forest on animal
2 population.

3 MR. WAISBERG: A. I might wish to return
4 to the question of flooding in this instance. I've
5 mentioned the Rollerway Dam that was constructed in
6 1887 and had those very severe initial impacts.

7 That dam was eventually replaced by a dam
8 called the Norman Dam built in the 1890s which
9 regulated more effectively the Lake of the Woods at a
10 much higher level than had existed at the time of
11 Treaty. This dam was to generate power.

12 Now, those damages that had been caused
13 by the Rollerway Dam were intensified by the Norman
14 dam. The International Joint Commission, which
15 investigated the manner in which these dams had raised
16 the level of the Lake of the Woods, concluded that on
17 the average the water level was three feet higher than
18 under normal high water conditions and there were
19 instance when it was six feet higher.

20 Now, the Department of Indian Affairs
21 investigated the damages caused by high water on Lake
22 of the Woods in 1929, and I believe we included it both
23 go in the database and in the report.

24 It's interesting to note that these
25 officials of the department advanced a claim for

1 -compensation on behalf of the Lake of the Woods'

2 Indians and this compensation was never paid and has
3 still not been paid. So basically all of the damages
4 that were listed in that damage report is still
5 unsettled.

6 MR. HOLZKAMM: A. I might add that we
7 have discussed gardens, hey meadows, timber, fishing
8 and wild rice, those damages plus --

9 MR. WAISBERG: A. Actual loss of land.

10 MR. HOLZKAMM: A. Actual loss of land,
11 the improvements of docks, buildings. As well, a
12 significant problem was erosion of Ojibway graves into
13 the lake itself and H.J. Burrie includes specific
14 references on a Band by Band level to those.

15 Q. Thank you. In the 20th century, what
16 happened with the traditional activities of hunting and
17 fishing?

18 Was it possible for the Ojibways to
19 switch back to more intensive hunting and fishing when
20 the wage labour opportunities which you have mentioned
21 declined?

22 A. This is perhaps an appropriate point
23 to introduce the topic that I was going to begin to
24 talk about ahead of time, anticipating you.

25 MR. COLBORNE: Madam Chairman, I think it

1 was the Board that wanted some clarification of the
2 matters referred to at the bottom of page 104 and the
3 top of 105 of witness statement; that is, the
4 enforcement of the game and fish regulations and
5 interference with the whole trapping practices during
6 the first half of the 20th century.

7 I advised the witnesses that you did want
8 some information on that and I think Mr. Holtzkamm is
9 going to tell us that he is in the process of working
10 on that very question. So he has a document with him.

11 MADAM CHAIR: Excuse me, Mr. Colborne. I
12 think that our question was, what the perception of
13 government was as to how the Ojibways would make a
14 living given that they were being regulated with
15 respect to hunting and trapping and they didn't have
16 access to wages and so forth.

17 I think that was specifically the
18 question, about how they were making -- how the
19 government expected them to make a living when they
20 seemed to be pressing in on all sides with respect to
21 their economic activities.

22 MR. COLBORNE: Very well. I will ask
23 that question also. I thought that there was a
24 particular mention of those passages at the bottom of
25 104 and the top of 105.

1 MADAM CHAIR: Yes, we did want
2 clarification of that and that was attached to the
3 larger question of how --

4 MR. COLBORNE: Perhaps I could get the
5 more specific information about the enforcement of
6 regulations and then ask these witnesses to sum up in a
7 way with regard to the more general question that you
8 are interested; that is, if I understand it correctly,
9 how was it perceived, I suppose, by the Indian side and
10 the non-Indian, how they were supposed to make a living
11 given the factual situation. Would that be fair
12 enough?

13 MADAM CHAIR: Yes, go ahead.

14 MR. COLBORNE: Q. You heard that
15 obviously, Mr. Holtzkamm. Could you give us the
16 particular factual information that you have from the
17 historical record having to do with the enforcement of
18 the game and fish laws, and after that we will turn to
19 the more general question of how people thought; that
20 is, both on the Ojibway side and on the non-Indian
21 side, how people thought that the Ojibways were suppose
22 to make a living given this factual information.

23 So let's just begin with the enforcement
24 of the regulations.

25 MR. HOLTZKAMM: A. Okay. Just as a

1 little background to the enforcement, I would point out
2 that still towards the end of the 19th century the sale
3 from meat and game animals was encouraged and was a
4 factor and in 1888 there is an account of moose being
5 killed by the Shoal Lake band and the meat being sold,
6 Rat Portage say some meat was being sold.

7 That changed within the earlier part of
8 the 20th century and I'll read the relevant section
9 just pertaining to that here. By the early 20th
10 century conditions changed as Ontario increased treaty
11 hunting rights.

12 In 1915 the Indian agent wrote to the
13 Department of Indian Affairs stating that:

14 "The fur trade is of little use.
15 They...", the Whitefish Bay Band,
16 "...cannot shoot moose or deer for sale.
17 this they find a great hardship and
18 detriment to their means of living."

19 So that had been an activity engaged in
20 by them and was now being affected and changed or being
21 restricted.

22 Q. Excuse me, Mr. Holtzkamm. You said
23 you were going to read from a document, and I believe
24 you are. For the record I would like to be able to
25 indicate what the document is and what page you're

1 reading from.

2 MADAM CHAIR: Shall we make this an
3 exhibit, Mr. Colborne?

4 MR. COLBORNE: Yes.

5 MR. HOLTZKAMM: I am reading from a
6 document entitled: The Creation of Economic Under
7 Development Among Treaty No. 3 Ojibway, Impact of
8 Government Intervention, 1800 through 1880.

9 MR. COLBORNE: At what page have you
10 begun to read from?

11 MR. HOLTZKAMM: I am beginning to read
12 from page 13.

13 MR. COLBORNE: Thank you.

14 MADAM CHAIR: Excuse me, Mr. Holtzkamm.
15 This document will become Exhibit 1853.

16 ---EXHIBIT NO. 1853: Document entitled: Creation of
17 Economic Under Development Among
18 Treaty No. 3 Ojibway, Impact of
Government Intervention, 1800
through 1880.

19 MR. HOLTZKAMM: That's not the same one,
20 I think. There are some on the back table. Shall I
21 hold back until we all have copies.

22 MR. COLBORNE: Yes, just wait for a
23 moment, please.

24 Madam Chair, this was exhibit number...?

25 MADAM CHAIR: 1853.

1 MR. COLBORNE: Thank you.

2 Q. You are one of the authors of this?

3 MR. HOLTZKAMM: A. Yes I am and Mr.

4 Waisberg is the other author.

5 Q. This is a recent paper of yours?

6 A. Yes. We gave a version of this at an
7 economic development conference last January and since
8 then I've made some additions to the materials to make
9 it more complete. We were somewhat rushed in January
10 for time.

11 Q. And when did this version of it come
12 out, the version with the changes?

13 A. I just completed writing the text for
14 it about a week and a half ago.

15 Q. Thank you. Go ahead then.

16 A. Shall I begin where I left off, or
17 would you like me to begin at the beginning again?

18 Q. I think you can begin where you left
19 off, you're reading from page 13; is that correct?

20 A. Correct.

21 Q. If you could just tell us what
22 paragraph you have been reading.

23 A. I am still on the first complete
24 paragraph of the page following the first quote.

25 "Elder Jim Netamequan of the Assabaska

1 Band complained in 1927 that 'sometimes
2 white men come after me for my hunting
3 ground or some time you watch me so close
4 on hunting I didn't even know if I did
5 let you have what I suppose I still
6 own.'

7 Ontario continued to deny Treaty
8 hunting rights and in 1933 passed special
9 regulations that in effect..", and this
10 is the Indian agent speaking,

11 "...away all the rights and privileges
12 the Indians thought they had under the
13 meaning of the Treaty. I don't know what
14 can be done now but it certainly seems to
15 me we should take some action as every
16 Indian has to break the regulations to
17 enable him to get food to exist."

18 This goes back to the subsistence
19 problem.

20 "Fishing and hunting is the most pressing
21 of our problems and something should be
22 done immediately. The chief and one of
23 the councillors from the Islington Band
24 were in to see me yesterday and said the
25 Indians would be starving by Christmas

1 as there was very little fur and white
2 men trapping in their territory and
3 legally they could not get fish or meat
4 for food for themselves or their
5 families.

6 "Previously they used to tell them
7 to grow potatoes, put up fish and meat.
8 Now if I tell them to do this,
9 I'm conniving in the breaking of the
10 regulations and presumably might be held
11 liable myself.

12 "The Department of Indian Affairs
13 prove to be ineffective in protecting
14 Treaty hunting rights.

15 "In 1939 the Kenora Indian agent
16 observed:

17 "Mr. Taylor, Deputy Minister of Ontario
18 Game and Fisheries when talking to me
19 last summer said it was nothing to do
20 with him. When asked how the Indians
21 were going to make a living it was our
22 department's baby not his. And the
23 Indians were not going to live on the
24 province's moose, deer, fish and so on.
25 And some other way of their making a

1 living should be devised by us."

2 End of the quote and end of my reading.

3 Q. And what about trapping. There was a
4 mention at the top of page 105 of your report, which is
5 the witness statement, about the trapping situation.

6 A. Yeah. We have that -- okay, let me
7 just give you the exact reference here so there can be
8 no misunderstanding.

9 This is a communication in 1930 from H.J.
10 Burrie Indian timber inspector for the department in
11 which he states to Duncan Campbell Scott Superintendent
12 General of Indian Affairs --

13 MR. WAISBERG: A. Deputy General.

14 MR. HOLTZKAMM: A. Deputy General, excuse
15 me. He states?

16 "This form of livelihood is absolutely
17 essential...", that is the cutting of
18 timber.

19 MR. FREIDIN: Excuse me. Is he reading
20 from this document?

21 MR. HOLTZKAMM: No, I'm reading from page
22 82 of the report.

23 MR. FREIDIN: Thank you.

24 MR. HOLTZKAMM: Again, this is H.J.
25 Burrie speaking, the long quote on that page. I'll

1 begin again:

2 "This form of livelihood is absolutely
3 essential as their previous pursuit of
4 trapping furs has practically vanished
5 owing to the influx of white trappers."

6 So again they were losing out as white
7 trappers were taking over the trapping grounds.

8 MR. COLBORNE: Q. Other than that
9 particular reference, can you tell us in general terms
10 what was happening with trapping during the early half
11 of the 20th century?

12 MR. HOLTZKAMM: A. As a general rule,
13 again I'm speaking of the number of complaints not any
14 one specific instance here.

15 There are references to continued influx
16 of white trappers at this time taking over or competing
17 with the Indians for the furs on the land.

18 There was -- I maybe should address this
19 point, it goes back to the traditional hunting and the
20 allocation of resources. The Indians themselves had
21 recognized trapping territories which they shared among
22 themselves and they had rules that were recognized by
23 them customarily for how these trapping territories
24 would be used.

25 So, for example, in travelling from one

1 area to another, other families passing through
2 someone's trap line were allowed to hunt and fish to
3 earn subsistence but they could not trap the animals
4 there for commercial purposes.

5 So these were all carefully worked out
6 and regulated. So there was a system among the
7 Ojibways themselves of allocating the resources
8 trapping grounds.

9 The white trappers coming into the region
10 either knew nothing of this or cared nothing for the
11 Indian system, it was not protected under existing
12 statute and so there was a competition and the Indians
13 found that their activities were being disrupted as a
14 result, and it was very difficult for them, one, to
15 earn a living from that to make an accurate assumption
16 that they could count on these resources.

17 For example, you might go out during the
18 summer and check your hunting territory to see what
19 animals were available and come back to find that -- in
20 the fall to find that someone else was trapping there
21 and had already removed some of the animals you had
22 counted on.

23 Q. Now, I want to get to this general
24 question of the perception of how the Ojibways were
25 supposed to make a living, and perhaps I should begin

1 by asking you: By the time we get to 1950 in the
2 historical record, what does the Treaty 3 Ojibway
3 economy and society look like, where is it located, how
4 big is it, how many communities, this kind of thing.
5 Just give us a bit of a picture of what it would be
6 like in 1950.

7 Are the Indians, for instance, living on
8 reserve at that time, is this before or after schools
9 were built on reserves. Just give us a general picture
10 of what the scene would have been like in 1950 as you
11 know it from reading the historical record?

12 MR. WAISBERG: A. Many of them would
13 have had houses located on the reserves. As we have
14 discussed earlier, there were continuing problems with
15 access to their off-reserve resources that were
16 affecting their economy, and as Indian Affairs wrote in
17 numerous damage reports, many of their traditional
18 resources, particularly wild rice, had been adversely
19 affected by such things as flooding caused by our
20 Euro-Canadian development in the region.

21 Q. What would have been the main sources
22 of income at that time for a typical on-reserve family?

23 A. Trapping, hunting for food, some
24 commercial fishing, some wage labour, some cutting
25 under permit.

1 Basically when you look at the Ojibway
2 economy of 1950 you find that it's not as focused on
3 the traditional resources as it was prior to the
4 Treaty. Many of the prime resources such as the
5 fisheries, especially the sturgeon, and the wild rice,
6 had been adversely affected.

7 So the economic employment opportunities
8 which some people had thought might replace that and
9 which during the late 19th century it had looked as if
10 such things as wage labour would replace that have, by
11 the early 20th century - and according to the
12 Department of Indian Affairs - faded away relatively in
13 importance.

14 It was still there, there was still some
15 employment opportunities off-reserve for wage labour,
16 but relative to the start of the late 19th century, the
17 impression given in the Indian Affairs records is that
18 the Ojibway people were somewhat marginalized and they
19 were not participants in the general economic
20 development of the region and they had suffered
21 grievous damage.

22 Q. You have previously mentioned
23 agriculture. Was there anything left of the Indian
24 agriculture by that time?

25 A. At most small kitchen gardens.

1 Q. And let me just tick off the various
2 things that you have mentioned. We are probably
3 covering ground a second time, but just for clarity;
4 the wild rice, was that still a major or significant
5 factor in the Ojibway economy?

6 A. The Ojibway certainly expended a fair
7 amount of effort attempting to locate rice. They
8 continued to plant it in places where they thought that
9 it would grow, but they were continually suffering
10 problems from the flooding of rice.

11 Dams were built, for example, not just
12 the dam at Lake of the Woods but at Rainy Lake which
13 affected wild rice crops of Rainy Lake. After the dam
14 went in at Fort Frances in 1907, that affected wild
15 rice on Rainy Lake as well.

16 So although there were still stands of
17 wild rice and still planting of stands by Ojibway at
18 inland lakes that were not being affected, their major
19 inland areas close to the reserves were severely
20 damaged.

21 Q. What about game?

22 A. By 1950, the regulatory arm of the
23 Ontario government was quite effective in preventing
24 the taking of game out of season. I know that the
25 Indian Affairs records contain numerous instances of

1 complaints from the Ojibway people, not just the ones
2 we have we have cited in the report.

3 In one instance an elder from Rat Portage
4 came into my office at Treaty 3 and asked me if I could
5 locate any information about an incident he had heard
6 about his uncles, who had caught a moose on the Kenora
7 reserve and were transporting it to the Washegamis Bay
8 Reserve, basically they're at opposite ends of the town
9 of Kenora, this was during the depression
10 approximately.

11 We consulted a file dealing with this
12 question and lo and behold we found the names of his
13 two relatives. They were convicted of having moose out
14 of season in 1933, and I believe both of them served
15 jail sentences and, of course, lost the moose.

16 Q. What about fish?

17 A. For the fisheries, the most important
18 fisheries, sturgeon, has been dealt with several times
19 I guess. Several bands had attempted to develop
20 commercial fisheries in the 19th century but there were
21 numerous complaints that the level of commercial
22 fisheries that they were permitted to have by the
23 Province of Ontario was insufficient to supply all of
24 their needs.

25 Q. What about on-reserve forestry, is

1 there anything more to add to what you've already told
2 us?

3 MR. HOLTZKAMM: A. The use of forest --
4 of limited cuttings of reserve timber by permit as a
5 means of relief continued up to, the last reference we
6 had to it was very close to 1950.

7 Q. And off-reserve wage labour, is there
8 anything you could add to what you've told us already.
9 What was the situation as of 1950?

10 A. It was generally depressed.

11 Q. All right. Now, I want to ask you -
12 and I'll do it from three different perspectives -
13 first will be the perspective of the federal
14 government; second will be the perspective of the
15 provincial government; and, third, will be the
16 perspective of the Ojibways themselves as disclosed in
17 the historical record.

18 Firstly, the perspective of the federal
19 government. How were the Ojibways supposed to be
20 making a living, what did they perceive was the manner
21 in which these communities would support themselves as
22 of 1950s?

23 MADAM CHAIR: Excuse me, Mr. Colborne.
24 Did you want to take the morning break or would you
25 like to complete this piece of evidence?

1 MR. COLBORNE: I am almost finished and I
2 think we will be finished in 10 minutes.

3 MADAM CHAIR: Why don't you go ahead.

4 MR. COLBORNE: Thank you.

5 MR. HOLTZKAMM: Well, as regards hunting
6 and fishing, we have as late as 1933 the agent saying
7 that took away all the rights and privileges the
8 Indians thought they had under the meaning of the
9 Treaty, indicating that he also had thought that was
10 the meaning.

11 MR. COLBORNE: Q. If that was the case,
12 though, what did the federal government think the
13 Indians were going to do to make a living?

14 MR. HOLTZKAMM: A. Well, he indicated in
15 that quotation he was at a bit of a loss, he didn't
16 know what to tell the Indians to do to make a living.

17 If he had what he had done in the past he
18 would be himself conniving at the breaking of
19 regulations and subjected to legal penalties.

20 MR. MARTEL: Was it even seriously
21 considered by anyone how the Ojibway were supposed to
22 make a living?

23 MR. WAISBERG: It was continually brought
24 forward by agent Edwards and his successor at the time
25 to departmental headquarters in Ottawa, but basically

1 they did nothing, they considered the legal
2 implications and ramifications but did not defend these
3 cases, to my knowledge, in court and took no further
4 action.

5 MR. COLBORNE: Q. The same question from
6 the provincial government's perspective, as far as you
7 can see from the historical record?

8 MR. WAISBERG: A. Well, we have
9 mentioned the enforcement of the game and fish
10 regulations against the Indians and Mr. Holtzkam read
11 the quote as recorded by the Indian agent from a person
12 said to be the Deputy Minister of Ontario Game and
13 Fisheries, that the problem of feeding the Indians was
14 Canada's responsibility not Ontario's, that Canada was
15 constitutionally responsible for Indians in Ontario's
16 view and that the province owned the resources on the
17 Crown lands and that, therefore, it wasn't their
18 problem.

19 Q. And what can you say from the
20 historical record about what the Ojibways' perspective
21 was on how they were supposed to make a living, given
22 this situation that we've been talking about?

23 A. Well, what time are we thinking
24 about?

25 Q. Well, maybe I could be a little

1 clearer in the question. In your evidence I believe
2 you have noted a switching process, switching from one
3 source of income to another as circumstances changed.

4 I think you mentioned, for example, the
5 switching to agriculture, switching to wage labour, and
6 so on. Is there anything by the time we get to 1950
7 that is available for the Ojibways to switch to?

8 A. Much of the resource base, at least
9 in the traditional way in which they gathered it, was
10 no longer available at that time.

11 So you had the enforcement of game and
12 fish. The Ojibways thought this enforcement by
13 Ontario's officials was clearly contrary to the Treaty.
14 It was at this time that there were developments again
15 of an Indian political organization in northwestern
16 Ontario that was formed to attempt to deal with
17 problems of this nature. At this time we find
18 petitions being made and Indians meeting.

19 We find evidence of this in the
20 Department of Indian Affairs records. They were quite
21 concerned with Indians meeting and would occasionally
22 assign a Mountie or ask the Indian agent to investigate
23 these subversive activities. That was the word they
24 used.

25 We have to bear in mind what tight

1 control the department had over Indians through the
2 administration of the Indian Act as it related to
3 Indians. For example, after Indians in southern
4 Ontario began to press for their Treaty rights as they
5 understood them in the mid-1920s, the 1927 Indian Act
6 came up with a new section that prohibited the
7 collection of money to further or advance Indian claims
8 which was written in such a way as to have the effect
9 of prohibiting Indians was hiring lawyers.

10 There was a lawyer in Kenora called
11 Robinson who began to draft some of these petitions for
12 these newly forming Indian councils and he received the
13 standard sort of letter from Indian Affairs pointing
14 out this section of the Indian Act.

15 Q. From the documents that you've read,
16 perhaps these petitions and so on, did they contain any
17 indication of what the Ojibways saw as a way out of the
18 predicament?

19 MR. HOLTZKAMM: A. I think the answer to
20 that would be that they were protesting and petitioning
21 because they wanted their Treaty rights to be protected
22 and this was their answer to how they expected to
23 overcome this, protect our Treaty rights, protect their
24 Treaty rights, excuse me.

25 Q. So their perception of how they could

1 make a living was if their Treaty rights were honored
2 they would be okay; would that be --

3 A. They would at least be in a better
4 position, they would be able to feed themselves and to
5 generate income and employment.

6 MR. WAISBERG: A. I believe it was the
7 same Indian agent Frank Edwards who we cited in this
8 passage, in yet another letter on the same subject
9 about the same time mentioned that the Indians are
10 losing all respect for our laws as they find that to
11 feed themselves and their families they have to go to
12 jail.

13 MR. COLBORNE: Thank you. Those are my
14 questions.

15 I am sure there will be other questions.

16 MADAM CHAIR: Thank you very much, Mr.
17 Colborne.

18 Mr. Freidin, why don't we take our
19 morning break now?

20 MR. FREIDIN: Right.

21 MADAM CHAIR: And when we come back we
22 will begin with your cross-examination. And how long
23 will you be?

24 MR. FREIDIN: It's hard to predict, but I
25 think I might be finished by one. I mean, I said two

1 hours at the outset. I think we might do it in an hour
2 and a little bit.

3 MADAM CHAIR: All right. Thank you, Mr.
4 Freidin.

5 ---Recess at 10:35 a.m.

6 ---On resuming at 10:50 a.m.

7 MADAM CHAIR: Hello, Mr. Freidin. Please
8 begin.

9 MR. FREIDIN: Thank you. Well,
10 gentlemen I have 14 little yellow stickies here and if
11 you want to keep tabs as I dispose of them you will
12 know how we are doing.

13 CROSS-EXAMINATION BY MR. FREIDIN:

14 Q. Both of you gentlemen are
15 ethnohistorians. When one wants to examine the history
16 of people such as the Ojibway, are there other experts
17 whose evidence is useful; in other words, experts other
18 than ethnohistorians?

19 I am thinking about archaeologists. Can
20 you give me any help?

21 MR. HOLZKAMM: A. Well, we work with
22 archaeologists, geographers, historians. I work -- I
23 find it necessary to consult even with some medical
24 accounts at times to deal with questions of effective
25 various plants on human nutrition.

1 MR. WAISBERG: A. And anthropologists
2 when they are doing standard field work as well will
3 frequently take, for example, life histories of the
4 elders.

5 Q. So is a lot of your work then drawing
6 on or speaking with experts in other fields and
7 compiling that sort of information into an
8 ethnohistorical document? Is that a fair description
9 of what you do?

10 MR. HOLZKAMM: A. It's frequently an
11 aspect of what we do. It's not necessarily the main
12 thing a ethnohistorian does because, of course, our
13 real focus is on those written records describing, in
14 this case, the Ojibway, written by people who are not
15 Ojibway and written from a background that's not
16 Ojibway.

17 That's our main focus, is written
18 historical documents and we do utilize other sources of
19 information in addition to that.

20 MR. WAISBERG: A. So --

21 Q. Sorry.

22 A. So, for example, when we look at the
23 question of Ojibway sturgeon fisheries for that paper
24 that was published, we did consult the very limited
25 available archaeological evidence, particularly David

1 Arthur's thesis, where he dug up various sites along
2 the Rainy River to see what evidence there was for the
3 historic period in relation to sturgeon, for example.

4 Q. So your work would involve looking at
5 works of other professionals, for instance a fisheries
6 biologist, interpreting that and including your
7 interpretation of that into the ethnohistorical
8 document?

9 MR. HOLZKAMM: A. Into our
10 interpretation of the ethnohistoric record. We are not
11 changing the written records that we are drawing
12 information from. We are incorporating it into our
13 account of what happened.

14 MR. WAISBERG: A. Again, for example,
15 from the fisheries paper we would look at the reports
16 of fisheries biologist as published.

17 There was one in particular I think we
18 referred to yesterday, the reports of Professor E.D.
19 Prince from the Dominion Department of Fisheries which
20 dealt with historical overview of the boom and bust
21 cycle in sturgeon fisheries across Canada.

22 MR. HOLZKAMM: A. Again, going back to
23 the fisheries paper. We drew on very precise
24 biological information about sturgeon in these
25 biological reports to gain information on the ratio of

1 isinglass to the total flesh of a sturgeon so that we
2 could make an interpretation and prediction of the
3 ethnohistoric record.

4 Q. Right. But if I wanted to ask a
5 technical question about one of those papers, about the
6 sturgeon fisheries, I would have to ask that question
7 of the author of those papers that you relied on, you
8 haven't have the expertise to get into the technical
9 questions or, you know, the validity of the conclusions
10 that had been come to, had been made by those authors,
11 by those other professionals?

12 MR. WAISBERG: A. Well, to use the same
13 example, we wouldn't be able to confirm the conclusion
14 of Professor Prince that the sturgeon fisheries had
15 independently gone through a boom or bust cycle. We
16 would have to take his conclusion published in an
17 annual report of the Department of Fisheries prepared
18 for parliament as the best information available.

19 Q. Thank you. Just before I leave this
20 general area. Are there differences of opinions
21 between ethnohistorians just as there are differences
22 between experts in other disciplines?

23 A. Yes, there are.

24 Q. Thank you. You were describing the
25 situation in relation to birch bark canoes during your

1 evidence and you were talking about cutting of birch
2 trees would remove them from availability and you had
3 spoken to elders.

4 Can you confirm for me that you were
5 talking of the pre-1950 era during that evidence?

6 MR. HOLZKAMM: A. In my case -- I
7 believe we both have. In my case, I was basically
8 attempting to get at information from their youth.
9 Because of their age it was definitely pre-1950.

10 Q. The same for you, Mr. Waisberg?

11 MR. WAISBERG: A. In my case, I believe
12 I was referring to an incident in the early 1980s where
13 an elder had attempted to construct a canoe but was
14 unable to locate birch bark of sufficient size.

15 Q. All right. Are either of you
16 familiar with -- are either of you aware as to whether
17 the birch trees which are used for the construction of
18 canoes must have certain characteristics, either in
19 terms of size, diameter, straightness, anything like
20 that?

21 MR. HOLZKAMM: A. Yes, there was
22 consideration. Size, they have to be of sufficient
23 size to obtain a large piece of birch bark from them.
24 As well, people tend to look for trees that do not have
25 a lot of scars or blemishes. Those would be structural

1 weaknesses in the bark themselves. It would affect the
2 uses that they could be put to.

3 Q. Is this information that you have
4 obtained through the historical record?

5 A. Through the ethnographic accounts
6 written about the Ojibway.

7 Q. Right.

8 MR. WAISBERG: A. If I recall, the fur
9 trade records from the Lake la Pluie post there was a
10 differentiation made between bottom and side bark and
11 this is pre-1873 Hudson Bay Company account books.
12 When they were discussing the sort of orders that have
13 been placed for the export of the particular materials
14 there was a differentiation between bottom bark and
15 side bark.

16 Now, it was not explained. One would
17 assume when looking at a construction of Ojibway canoe,
18 which I have examined during the process, that it would
19 be best to have the thickest, cleanest most seamless
20 bark on the bottom and that you didn't have to worry as
21 much about the side, but I'm speculating.

22 Q. So when you are talking about bottom
23 bark you are talking about the bark on the bottom of
24 the canoe?

25 A. Correct.

1 Q. And the side bark on the side of the
2 canoe?

3 A. Yes, not on the tree.

4 Q. Thank you. Can you help me. When
5 you talk the birch bark off the birch tree does it kill
6 the tree, or do you know?

7 MR. HOLZKAMM: A. Well, there is -- you
8 asked if there was total agreement on that.

9 Densmore, for example, describes the
10 cutting of birch bark as involving cutting the tree
11 down, being very careful that it does not fall on to
12 the grounds, that it remains attached to the stump as
13 kind of a hinge and that it is stripped off that way.
14 That would definitely kill the birch tree.

15 On the other hand, Melvin Gilmore when he
16 talks about some uses of plants by the Chippewa Indians
17 claimed that in some circumstances birch bark was
18 stripped carefully to avoid injury not tree.

19 Q. The reason I was asking the question,
20 you indicated the reverence with which the birch bark
21 was taken was there was an offering because of the
22 sacrifice the tree was making was the way you put it.

23 A. Rate.

24 Q. I was wondering if that basically
25 involved the tree dying as a result of the taking of

1 the bark?

2 A. Well, remember that the offering --
3 we think of trees as biological entities and not much
4 more unless you are from some of the fringe of various
5 movements.

6 MR. WAISBERG: A. There are similar
7 instances for treating animals the same way.

8 MR. HOLZKAMM: A. Yes, animals are
9 treated the same way. So you are apologizing to a
10 spirit of all of the birch trees, that this birch tree
11 shares in part -- after you kill the birch tree you are
12 not necessarily killing the spirit and, in fact, by
13 treating it with reverence you are increasing the
14 probability that the spirit will grow more trees for
15 you.

16 MR. WAISBERG: A. The same was done with
17 beaver and bear, for example.

18 MR. HOLZKAMM: A. In particular.

19 MR. WAISBERG: A. In particular. They
20 are well noted by anthropologists.

21 Q. Mr. Holtzkamm, you made reference to,
22 trees would be removed from availability. You said the
23 cutting of birch trees would remove them from
24 availability. Who was cutting those trees?

25 MR. HOLZKAMM: A. I'm referring to the

1 cutting of trees as part of the forest industry,
2 lumber. Either cutting them for lumber itself or for
3 cord wood.

4 Q. So is it your information then that
5 during the pre-50 period that birch was a merchantible
6 tree? It was a tree that was desired and was being cut
7 by the industry?

8 A. I don't know if it was one of the
9 most merchantible, but I would assume that some birch
10 trees were being cut.

11 As well, where I live, this is from my
12 own experience on a reservation, there is a lot of
13 logging going on. In the process of cutting the
14 surrounding trees, frequently other trees there are
15 injured or damaged in the process as they fall. That
16 would also go to that, that they would be affected.

17 Q. All right. Mr. Holzkamm, you also
18 made reference to the traditional gardens being
19 created, that they would be used until they would
20 decline in productivity and then the Indians would move
21 on and the plots left would return to the forest.

22 Is that something that you learned about
23 as a result of review of the historical record?

24 A. The implications of the historic
25 record are that gardens were used and occasionally

1 abandoned.

2 On the other hand, there appears to be a
3 fairly long-term tenancy on the part of people to use
4 these gardens.

5 Not getting into it too deeply, but there
6 are other reasons in depletion of soil. After you grow
7 certain crops and a patch for a period of time, such as
8 potatoes, it depletes certain resources from it. You
9 have to either grow other crops or let it lay fallow
10 for a while before you can successfully grow them
11 again.

12 As well, insect pests associated with
13 certain plants proliferate. If you left it lay fallow
14 for a few years they die and you can come back and try
15 to spend all your time trying to deal with that.

16 Q. These traditional gardens you
17 referred to, are these areas which would be cleared of
18 trees for purposes of growing the produce?

19 A. We might not recognize them in
20 relation to the garden patches you see in Better Homes
21 and Gardens, for example, in pictures. It was not such
22 a process.

23 Trees might simply be stripped of bark
24 and left to dry. If the leaf canopy is no longer there
25 the sunlight can get through and the smaller stuff

1 might be cleared. Using the tools the Ojibway were
2 using you could garden all around that.

3 MR. WAISBERG: A. One of the inducements
4 of the Treaty of course was the provision of
5 agricultural equipment which would assist the Ojibway
6 in modernizing their agricultural production including
7 axes and iron hose.

8 Q. Okay.

9 MADAM CHAIR: Excuse me, Mr. Waisberg.
10 Did that also include farm animals, livestock?

11 MR. WAISBERG: Yes, it did.
12 Cattle, oxen.

13 MADAM CHAIR: Are those Treaty provisions
14 still in effect today with respect to agriculture?

15 MR. WAISBERG: Those Treaty provisions in
16 terms of the government interpretation was that once
17 for all to assist the Bands in farming -- and most of
18 the animals and hose and arrows and plows was given
19 prior to about 1890.

20 However, there was a controversy that was
21 referred to in one of the Indian Affairs Annual
22 Reports, I believe, of 1883 where the Ojibways stated
23 that their understanding of the Treaty agreement
24 regarding agriculture where it says each family shall
25 get so much equipment, et cetera, et cetera, was that

1 each new family would get that equipment and that they
2 were complaining vociferously to the Indian agent and
3 to the inspector of Indian agents. I believe he closed
4 his report with: He disabused them of that notion.

5 MR. FREIDIN: Q. Just one question
6 regarding your evidence about management of forest
7 cover.

8 I'm not sure which of you indicated that
9 there was considerable study regarding this, regarding
10 North American and that you were able to refer to one
11 example or one specific example in the Treaty No. 3
12 area where the forest cover was burned to encourage
13 blueberries. I am not sure which one --

14 MR. HOLZKAMM: A. It was probably
15 myself.

16 Q. All right. There was also some
17 reference to the bears being attracted?

18 A. That was an area where bears were
19 hunted.

20 Q. Do the historical records indicate
21 whether this burning took place for the purpose of
22 growing blueberries or was it also specifically done
23 for the purposes of attracting bears as well?

24 A. The record is not as finally grained
25 as we would have preferred to give us that information.

1 I believe the Ojibway elders at the time
2 were sufficiently well versed in the knowledge of the
3 forest to know where there were blueberries bears are
4 probably not far behind.

5 Q. In other areas of North America was
6 there has been reference to reference of management of
7 forest cover, are there situations where within one
8 Indian nation there are a great number of examples of
9 management of forest covers as opposed to just one that
10 you were just able to find in the Treaty 3 area?

11 A. Yes, where authors have made specific
12 studies and gone out and done indepth ethnographic
13 investigations on that topic. There are numerous
14 examples.

15 Q. I don't want the other examples. I
16 am trying to establish that there is only one example
17 in the Treaty 3 area.

18 Is it that if you go to other areas of
19 study you can find many more records of that sort of
20 management?

21 A. I would point out that our study here
22 had to be based upon the written record as
23 ethnohistorians and what we had available already. We
24 could not devote -- we had neither not enough money to
25 go out and inquire of elders specifically for this

1 study.

2 MR. WAISBERG: A. I believe there was,
3 however, a recorded comment by an Ojibway that fire is
4 our best tool.

5 MR. HOLZKAMM: A. If you are referring
6 to just the management of forest cover, tool was the
7 major source for clearing gardens.

8 Q. Can you briefly describe what kind of
9 logging was going on prior to the Treaty?

10 MR. WAISBERG: A. There was production
11 of cord wood for the Dawson Road beginning about 1868.

12 Q. Right.

13 A. And it appears to have been either
14 wage employment or cutting by the Indians and the
15 subsequent sale by them. The references are somewhat
16 unclear, but it could be both.

17 Q. Prior to the construction of the
18 Dawson Road in 1868, would there have been any logging
19 to speak of?

20 MR. HOLZKAMM: A. I don't know --

21 Q. I am talking about logging by white
22 men.

23 A. Okay. If you are referring down and
24 using trees, yes.

25 Q. Yes. I am not talking about native

1 people, I am talking about non-natives.

2 A. We would have to assume that the
3 canoe brigades passing through the region when they
4 camped cut down trees to provide fire wood or used
5 wood. As well, there are numerous accounts in the fur
6 trade record to trees being cut down by them.

7 Doesn't Lac Seul have --

8 MR. WAISBERG: A. I believe we have a
9 Lac Seul incident in the database.

10 Q. All right.

11 MR. HOLZKAMM: A. Timbers were involved
12 in making posts.

13 Q. Can you turn to page 47 of your
14 witness statement, then, please.

15 A. The statement?

16 Q. Yes.

17 A. Okay.

18 Q. It is on this page that you refer in
19 the middle of that first big paragraph to Ojibway
20 management in relation to fur production and you make
21 the comment that - five or six lines up from the
22 bottom:

23 "While there is variation over time in
24 the numbers of certain species, this is
25 normal in northern environments where

1 many species periodically undergo cyclic
2 population changes. Also changes in the
3 availability of food supply to supplement
4 trapline fare and variations in fur price
5 had an affect as well."

6 If we go to the seven figures that you
7 have on the next few pages, it seems to indicate to me,
8 gentlemen, that even in a situation where there is no
9 industrial logging like we have today, your records
10 start here in 1821, there there were wide variations in
11 the populations or at least -- pardon me, the returns
12 of the various animals that you referred to?

13 A. I'm glad you distinguished between
14 that because these are returns.

15 Q. Right. But you would agree with me
16 that the returns varied significantly over those years?

17 A. The returns themselves vary.

18 Q. And, therefore, the records which
19 show returns of fur varying in that pre-treaty period
20 obviously were occurring as a result of something other
21 than logging because there was no logging going on
22 then. Would you agree with that?

23 A. There is considerable literature that
24 describes variations in certain species which are not
25 responsive -- which are not caused by logging.

1 Q. Right. But would you agree with me
2 that if you look at the returns for a period where
3 there was no logging, that the wide variation in the
4 returns shown by your own graphs must have been the
5 result of something other than logging? It seems to me
6 a simple proposition.

7 A. There is no disagreement with that on
8 my part.

9 MR. WAISBERG: A. Yes.

10 Q. And, therefore, I would suggest to
11 you that if one looked at fur returns in a period and
12 in an area where there is logging and you see the same
13 sort of variation, just by looking at the returns data
14 one would be -- it would be unreasonable to conclude
15 that the variation was the result of the logging.
16 Would you agree with that?

17 A. I certainly would not look at just
18 one source to make a conclusion of that.

19 Q. I know. I am just saying, if
20 somebody wanted to just look at the returns and said:
21 Look at the returns, we have logging in this area, the
22 returns are going up and down and obviously the logging
23 is causing that, my sense would be to say: Yes, but if
24 we go back to the early records we the same variations
25 in there with no logging, so that's not a necessary

1 connection here.

2 A. Yes, I would agree with that.

3 Q. Would you agree with that as well,
4 Dr. Waisberg?

5 A. Mr. Waisberg.

6 Q. Mr. Waisberg?

7 A. Yes.

8 Q. Thank you. There was some
9 reference - and I think it was, Mr. Holtzkamm - to
10 marten being dependent on old growth forests and I just
11 want to explore that with you.

12 It was you who made that comment; was it
13 not?

14 A. I'm not sure that was the complete
15 comment I made, but that was an aspect of my comment,
16 that there is a relationship between marten and old
17 growth forest.

18 Q. The question actually put to you as:
19 Did logging have an effect on smaller animals and you
20 answered: It would have an effect on these animals
21 generally and you continued to say marten were
22 dependent on old growth forests.

23 A. Okay. It is my recollection that I
24 thought I said for part of their life cycle, but I may
25 have thought I said that and not.

1 MADAM CHAIR: You did say that, Mr.
2 Holzkamm.

3 MR. HOLZKAMM: Okay. From what I
4 understand, resting areas for marten are largely found
5 in conditions characterized by old growth forests.

6 MR. FREIDIN: Q. You will probably have
7 to answer this based upon your reading of the
8 historical record because you have not been qualified
9 as a wildlife biologist.

10 MR. HOLZKAMM: A. Fine.

11 Q. So if you can answer, that's fine; if
12 you are unable, say so.

13 It is my understanding that the type of
14 logging practice that was going on pre-1950s was
15 generally a practice called highgrading where the
16 companies would go in and they would select the best
17 logs and just leave the rest which apparently wasn't
18 very good silviculture but it was what they were doing
19 in any event. Are you able to confirm that?

20 A. Based on my reading of the historical
21 account, timber companies operating on some reserves --
22 or on one reserve in particular generated complaints by
23 having contracts for cutting one kind of wood and
24 cutting everything else of value and leaving a mess
25 behind.

1 MR. WAISBERG: A. There are other
2 instances where companies were recorded as having gone
3 in just for the pine, for example.

4 Q. Are you aware based on the historical
5 record as to which one of those practices was most
6 frequent?

7 Now, this was once non-natives came here
8 and there was a logging industry pre-1950. Are you
9 able to advise which type of practice was more
10 prevalent; the one where they went in and cut
11 everything or the one where they went in and highgraded
12 and just took the good stuff?

13 If you can't, that's fine.

14 A. I could possibly answer that question
15 in relation to the timber returns of a reserve that I
16 referred to earlier, Wabigoon Indian Reserve.

17 The species that were taken out as
18 reflected in the colours returns after the surrender of
19 1907 until the cessation of operations by that company
20 in 1916 included spruce, tamarack, red and white pine.

21 Q. Okay, thank you. In relation to this
22 issue of trapping, and speaking of the period 1873 to
23 1900, and this is evidence which was led today.

24 I believe again, Mr. Holtzkamm, that you
25 said that fur prices rose and populations were up and,

1 therefore, trapping became more lucrative?

2 MR. HOLTZKAMM: A. Just a point of
3 clarification, I may have misheard you. Did you say
4 1973 or 1873.

5 Q. 1873 to 1900.

6 A. Oh, all right.

7 Q. I'm sorry, I may have --

8 A. Sorry.

9 Q. I may have made an error. But during
10 that period you made the comment that fur prices rose
11 and populations were up.

12 Was there more industrial logging going
13 on during the period 1873 to 1900 in comparison to
14 the -- pardon me, was there more industrial logging
15 going on between 1873 and 1900 when you say the
16 populations were up than occurred before the Treaty,
17 before 1873 when we saw the populations in some places
18 being way down?

19 A. The description was that furbearing
20 animals were more abundant at that particular time,
21 that the agent was witnessing those, or was having
22 those told to him. I don't think he was out there
23 running a trap line himself.

24 Q. And was the industrial logging going
25 on during that period of 1873 to 1900--

1 A. That was a period of industrial
2 logging.

3 Q. --was that considerably more than
4 what was going on pre-Treaty?

5 A. Oh definitely there was more going on
6 then.

7 Q. Thank you. In terms of this issue of
8 the effects of logging on certain animal species in
9 terms of furbearers, am I correct that beaver was
10 probably the most important species for trapping, this
11 is pre-1950?

12 A. You're talking about the entire
13 period covered by our report?

14 Q. Yes.

15 A. If I were to look at the total
16 valuation, I think for many years species such as
17 muskrat and marten were more important financially.

18 Q. Can we agree that beaver throughout
19 the period was at least an important furbearing
20 species?

21 A. I have no dispute over that.

22 Q. Right. And am I correct that during
23 the pre-1950 period that the method of getting logs to
24 market that were cut was by use of water, they would be
25 floated down rivers to the mills?

1 A. That was one of the common methods.

2 Q. And I understand that on many of
3 those occasions there was cutting right down to the
4 water's edge, I guess because they wanted easy access
5 to the water for the purposes of putting their logs in,
6 there certainly weren't any guidelines around saying
7 they shouldn't do that for fish habitat purposes; can
8 you agree on that?

9 MR. WAISBERG: A. I don't believe that
10 point was covered in the Department of Indian affairs
11 timber regulations, so I can speak to the on-reserve
12 harvesting, it wasn't covered, it wasn't part of the
13 timber regulation on reserve.

14 Q. Are you able, based on the historical
15 record, to confirm that a lot of the cutting which took
16 place, or there was a lot of cutting which took place
17 right down to the shorelines pre-1950?

18 MR. HOLTZKAMM: A. Well, actually, I
19 think we need to clarify that because we found numerous
20 occasions in the department, at least on reserves where
21 we have Department of Indian Affairs regulations where
22 their cutting was not allowed near the water's edge
23 because they wanted to "preserve the scenic qualities".

24 I'm not sure whether that was on -- for
25 the benefit of the Indians the scenic qualities that

1 were being preserved or for whom; in other cases they
2 refer to that in terms of the tourist industry.

3 MR. WAISBERG: A. That may have been at
4 Rat Portage.

5 MR. HOLTZKAMM: A. Yeah, and...

6 Q. Are either of you able to comment on
7 whether or not cutting of trees to the shoreline can
8 have a beneficial effect for beaver?

9 A. Depends on what kind of trees are
10 being cut.

11 Q. And I guess what kind of trees grow
12 back.

13 A. And presumably that.

14 Q. Thank you. We're up to eight
15 stickies. This will be a very fast question. You were
16 talking about the sustained sturgeon fishery in the
17 Treaty 3 area, a level which was sustained when the
18 natives were using it solely.

19 Is there any record as to the level at
20 which that was sustained?

21 A. Yes, we have records there. Do you
22 have the figure in front of you?

23 MR. WAISBERG: A. Yes, I have the
24 average annual sturgeon harvest from the Lake of the
25 Woods basin it was printed in this report, and it

1 varied between, on average, 200 to 400,000 pounds per
2 year.

3 Q. All right.

4 A. Over that period 1823 to 1889.

5 Q. Okay. So when you referred to the
6 sustained level of sturgeon, that's the number you're
7 talking about?

8 A. Yes.

9 MR. HOLTZKAMM: A. Within that range.

10 Q. Okay, thank you. You were giving
11 evidence regarding the fur trade period which began in
12 1775, and during that evidence - I think again it was
13 you, Mr. Holtzkamm - made the reference to the fact
14 that the Hudson's Bay Company wanted to impose quotas
15 as to the numbers of beaver to harvest and the time of
16 the year at which they should be harvested.

17 I am just wondering whether you can
18 provide any advice or information as to why the
19 Hudson's Bay Company wanted to impose quotas on the
20 numbers that were being harvested?

21 A. Yes, I can. At that time in some of
22 their territories there had been a die-off of beaver,
23 John Tanner noted that happening in the early part of
24 the 19th century, describes a disease epidemic
25 occurring which seemed similar to I believe it's -- I'm

1 not a biologist but I have had it described to me as
2 similar to that of tuberania, it's also a nasty thing
3 if you get infected yourself, humans are also a host.

4 That had caused a die-off; in addition,
5 in some areas of North America, due to unrestrained
6 trapping conditions, beaver had become quite scarce.

7 Q. As a result of what?

8 A. Of unrestrained trapping activities,
9 especially further to the west where the white
10 brigades, different system than operated in the Treaty
11 No. 3 area, the brigades of Hudson's Bay Company were
12 competing against brigades of rival American trappers
13 and to prevent the American trappers of penetrating in
14 to Hudson's Bay territories, they were trying to in
15 fact create a scorched earth policy near the border.

16 Q. All right. Are you saying...

17 A. So that the Hudson's Bay Company was
18 concerned about a generally low level of beaver for
19 part of the period and in some areas.

20 In Treaty No. 3 area there was a decline
21 early on and still under the period of Ojibway
22 management there was a significant increase, so that by
23 the period before Treaty beaver population -- or
24 distinguished between beaver populations and returns,
25 returns are an indication of possible population, they

1 only indicate what was being brought in; the returns
2 had reached an all time high, so that there were more
3 beaver than ever before.

4 MR. WAISBERG: A. You also have to
5 consider market conditions plus fashion, for example.
6 We have to recall that the Hudson's Bay Company was in
7 the market to sell furs and it was directly related to
8 European fashions and hats and the use of felting
9 beaver skins to make hats declined due to fashion
10 changes after about 1830 in Europe.

11 MR. HOLTZKAMM: A. The prices for beaver
12 dropped and we have accounts that the Ojibway, when
13 faced with such conditions, had a favourite method of
14 roasting beaver which involved singeing the hair and
15 roasting the whole thing over the fire.

16 Q. Well, am I to understand that the
17 Hudson's Bay Company wanted the Ojibway to reduce the
18 number of beaver which would be taken because the
19 Hudson's Bay Company were concerned about population
20 levels due to either disease or unrestrained trapping
21 activity. Was that the motivation, or...

22 A. In some areas there they were
23 concerned about the population. The ultimate interest
24 of the Hudson's Bay Company was that beaver were
25 produced for fur and traded, so they wanted to ensure

1 the largest possible number being traded as opposed to
2 being diverted to any other use. They wanted to assure
3 that these were of high quality fur, they wanted to
4 restrict the season under Ojibway -- under Treaty No.
5 3.

6 For reasons such as competition between
7 fur companies and as well the Ojibway position
8 regarding resources and their strength, the Hudson's
9 Bay Company was not able to impose its regime upon the
10 Ojibway here, what was part of a general Canada-wide
11 policy by that time.

12 Q. And, again, can you just briefly
13 explain why they were not able to impose that regime in
14 this area?

15 A. Because the Ojibway were strong
16 enough to maintain their own system of management, a
17 bit of competition and an abundance of resources.

18 Q. Are you familiar with an author by
19 the name of Arthur Ray?

20 A. Yes I am, I am familiar with him.

21 Q. What sort of professional
22 qualifications does he have, is he an ethnohistorian or
23 do you know?

24 A. He's a geographer who studies
25 ethnohistory as part of his sub-discipline of

1 geography.

2 Q. Are his words well respected?

3 MR. WAISBERG: A. Extremely well
4 respected.

5 MR. HOLTZKAMM: A. Extremely well
6 respected, yes.

7 Q. During your evidence regarding the
8 circumstances surrounding the Treaty - and I wasn't
9 going to ask you any questions on this topic, but it
10 was just as a result of your oral evidence, I wanted to
11 clarify something - Mr. Holtzkamm, you referred to two
12 documents, you referred to the Dawson notes and you
13 referred to the Morris notes. You did so as a result
14 of a question from Mr. Colborne.

15 You were basically dealing with the
16 clause in the Treaty which we find reproduced on page
17 59 of the witness statement. Have you got page 59.

18 A. Yes, I have.

19 Q. And in the last section that is
20 dealing with the terms of the agreement known as Treaty
21 No. 3 you were directed to the last -- maybe you were
22 talking about the saving and excepting clause which we
23 find in the last four lines on that page, which says:

24 "Saving and excepting such tracts as
25 may from time to time be required or

1 taken up for settlement, mining,
2 lumbering or other purposes by your said
3 government of the Dominion of Canada."
4 et cetera.

5 And in relation to that Mr. Colborne
6 asked -- referred to the word regulation and asked
7 whether there were any other documents which refer to
8 the regulation.

9 And, Mr. Holtzkamm, you went on and said,
10 it's a bit of a side issue, and it was in that context
11 that you referred to the Dawson notes and to the Morris
12 notes.

13 Now, I want to give to you first a
14 document which I suggest to you is a copy of the Dawson
15 notes, and could you confirm -- (handed)

16 You already have it?

17 MR. WAISBERG: A. Yes.

18 Q. Are you able to confirm that the
19 three-page document that I gave you in fact are copies
20 of the Dawson notes?

21 MR. HOLTZKAMM: A. I don't see anything
22 here that leads me to suspect any differently. These
23 look similar.

24 Q. All right. You made reference in
25 your evidence, you said the Dawson notes say, and I'm

1 quoting what you said in the evidence:

2 "It may be a long time before we want
3 other lands and until we do you may hunt
4 and fish until then."

5 Would you turn to --

6 MR. FREIDIN: First of all, could this
7 document be made an exhibit, Madam Chair.

8 MADAM CHAIR: Yes, Mr. Freidin. This
9 will be Exhibit 1854.

10 ---EXHIBIT NO. 1854: Three-page excerpt of Dawson
11 notes.

12 MR. FREIDIN: Q. On the second page of
13 the exhibit which has got a little 14 in the top
14 right-hand corner of the xeroxing the note reads,
15 starting in the second line -- and if we go back to
16 page 13 you'll see this is Governor Morris speaking:

17 "I want to have lands for farms reserved
18 for your own use so that the white man
19 cannot interfere with them, one
20 square mile for every family of five or
21 thereabouts. It may be a long time
22 before the other lands are wanted and
23 you will have the right to hunt and fish
24 over them until the white man wants
25 them."

1 And is that the section of the Dawson
2 notes that you were referring to in your oral evidence?

3 MR. HOLTZKAMM: A. I believe that is the
4 section I was referring to.

5 Q. Okay. And if we look at -- if I can
6 show you another document.

7 A. This one. (indicating)

8 Q. Yes, excerpts from a document
9 entitled The Treaties of Canada with the Indians of
10 Manitoba and the Northwest Territories.

11 I provided you with an excerpt from that
12 document. By the way, this is by the Honorable
13 Alexander Morris and I provided you with a copy of page
14 58 and 71 of that document. And are you familiar with
15 this document?

16 A. Yes.

17 Q. And would you turn to page 58 of that
18 document, and if you look on the lefthand -- pardon me,
19 on page 58 and you go about halfway down or a third of
20 the way down the first full paragraph where his
21 Excellency Governor Morris is speaking, he says:

22 "I will give you lands for farms and also
23 reserves for your own use."

24 Do you see that? Go down --

25 A. Okay, yes.

1 Q. And he says:

2 "I have authority to make reserves such
3 as I have described not exceeding in all
4 a square mile for every family of five or
5 thereabouts. It may be a long time
6 before the other lands are wanted and in
7 the meantime you will be permitted to
8 fish and hunt over them."

9 So Governor Morris made a similar record
10 to that of Dawson; we can agree on that?

11 A. It's similar, it's not the same.

12 Q. Not identical.

13 A. It's not identical, no.

14 Q. Okay. You also made reference in
15 your evidence in response to Mr. Colborne's question
16 about regulation that Governor Morris made a comment,
17 and what you said in your evidence was, we must have
18 access to areas where the land is vacant, and I wasn't
19 too sure to whom that comment was attributed, but would
20 you turn to the second page of the document that we're
21 now looking at.

22 If you go on page 70 about halfway down,
23 one of the Chiefs is noted to have said:

24 "We must have the privilege of travelling
25 about the country where it is vacant."

1 And Mr. McKay responded:

2 "Of course I told them so."

3 Is that the reference that you were -- is
4 that the passage you were referring to in your oral
5 evidence?

6 A. On that I'm not specifically sure.
7 If I may have a moment, or if we can perhaps go on to
8 another question and come back to that one.

9 Q. Well, I would rather just skip the
10 moment now.

11 A. Okay.

12 MADAM CHAIR: Sorry, Mr. Holtzkamm. I
13 just wanted to ask Mr. Freidin if he wanted these pages
14 to be an exhibit?

15 MR. FREIDIN: Yes, I think we should, now
16 that we've been referring to them.

17 MADAM CHAIR: All right. That is exhibit
18 1855 comprising pages 58, 59, 70 and 71 of the Treaty 3
19 Agreement as described by Alexander Morris.

20 ---EXHIBIT NO. 1855: Excerpt of pages 58, 59, 70 and
21 71 of Treaty 3 Agreement as
described by Governor Morris.

22 MR. HOLTZKAMM: I have looked and, yes,
23 you are correct, and that is the passage I was
24 referring to.

25 MR. FREIDIN: Q. All right. And if we

1 look at the Dawson notes which are Exhibit 1854, at the
2 excerpt which has been marked as page 34 in the top
3 righthand corner of the xerox copy, Mr. Dawson has
4 attributed a comment to someone identified as
5 Naninegimus. I take it that was one of the Chiefs?

6 MR. HOLTZKAMM: A. Right.

7 Q. Saying:

8 "Would they have the privilege of
9 travelling through the country."

10 And then he says:

11 "Yes."

12 Seems to me that that is -- again it's a
13 similar recording of a similar comment, not word for
14 word?

15 A. It's recording a similar comment.

16 Q. All right. Would you agree that the
17 existence of passages such as the ones that I have
18 referred you to are some of the things which caused
19 there to be a controversy or lack of agreement on what
20 the clause in the Treaty actually means when it talks
21 about saving and excepting such tracts as may from time
22 to time be required or taken up for settlement?

23 A. Yes, there is some dispute as to the
24 meaning of those words.

25 Q. Okay. And these documents are part

1 of that controversy?

2 A. They are part of the controversy.

3 Q. Okay. Are you able to provide any
4 assistance as to what the Chief would have been
5 speaking about when he was referring to:

6 "Wanting the privilege of travelling
7 about the country where it is vacant."

8 What would he be talking about 'where it
9 is vacant'?

10 A. May I speculate?

11 Q. Well, is that -- let me start again.
12 Is that a matter that you have directed your mind to in
13 the past?

14 A. I have thought about it. My
15 resolution is not total on that topic right now. The
16 vacant clause is again subject to interpretation.

17 My understanding -- my belief is at this
18 point that they were specifically concerned about areas
19 that were being farmed, the influx of farmers coming
20 in, that there would not be as had happened in the
21 American case a problem with Indians interfering with
22 the settlers coming into the territory, disturbing
23 mines, interfering with farms and the like.

24 That was a common aspect of many
25 Treaties, that they would not interfere with the

1 activities of the white man.

2 MR. FREIDIN: Okay, thank you.

3 MR. COLBORNE: Excuse me, Madam Chairman.

4 I wonder if I could request a very brief recess for
5 five minutes?

6 MADAM CHAIR: That's, fine Mr. Colborne.

7 MR. COLBORNE: Thank you.

8 I think Mr. Freidin is almost finished
9 and I had just a couple of clarifying questions by way
10 of re-examination, so I am going to be very brief.

11 However, I am requesting the five minutes
12 now, if I may.

13 MR. FREIDIN: Sure.

14 MADAM CHAIR: That is fine.

15 ---Recess at 11:55 a.m.

16 ---On resuming at 12:00 p.m.

17 MADAM CHAIR: Mr. Freidin?

18 MR. FREIDIN: No further questions.

19 MADAM CHAIR: Thank you.

20 Mr. Colborne?

21 RE-DIRECT EXAMINATION BY MR. COLBORNE:

22 Q. Very briefly by way of re-examination
23 and just arising out of some of the points that were
24 raised by Mr. Freidin, and one raised by the Chair.

25 Firstly, you were asked about the

1 agricultural provisions under the Treaty, Mr. Waisberg,
2 and you were told that they were provided once and for
3 all.

4 Were there items under the Treaty, that
5 is goods, that were to be provided on a regular basis?

6 MR. WAISBERG: A. Ammunition and twine.

7 Q. What was the ammunition for?

8 A. The ammunition, for hunting.

9 Q. What was the twine for?

10 A. The twine was for fishing.

11 Q. And how frequently is that to be
12 provided?

13 A. Once a year forever.

14 Q. And is it still being provided?

15 A. It's still provided, to my
16 information. It doesn't go very far now. I believe
17 one band member characterized it as four shotgun shells
18 and a tiny teensy roll of twine per year.

19 Q. Is that because of inflation? Maybe
20 you should tell us more.

21 A. Unfortunately there is no inflation
22 clause in the Treaty by which this amount that was
23 given annually would be increased.

24 Q. What was the amount?

25 A. \$1,500 per year.

1 Q. So in 1873 the promise was \$1,500 per
2 year for twine and--

3 A. And ammunition.

4 Q. --ammunition. And still in 1991
5 \$1,500 is spent to buy twine and ammunition and it is
6 in fact delivered to the Ojibways?

7 A. Yes, as part of their Treaty promise.
8 Of course, Indian Affairs makes other assistance
9 available.

10 The same comment could be made about the
11 Treaty annuities set at \$5 a year or the Chief's salary
12 set at \$25 a year. Those amounts are still paid today.

13 Q. Mr. Freidin asked about whether there
14 was any logging prior to construction of the Dawson
15 Road. I think the answer is no. There was possibly
16 some qualifications on what one meant by logging, but
17 my question to you is: In the Treaty 3 area, was there
18 ever a market or a demand for logs; prior to that time
19 were there any parties who were prepared to or needed,
20 whether Indian or non-Indian, logs and were ready,
21 willing and able to pay or barter something for logs?

22 MR. HOLTZKAMM: A. There was a limited
23 demand at the trading posts for logs for construction,
24 firewood, as well as the activities of missionaries who
25 purchased timber for construction.

1 Q. And who fulfilled that market that
2 did exist?

3 A. It varied. Occasionally employees of
4 the post were used and other occasions Indians
5 performed the activity. In some cases the Indians may
6 have been employees but are not distinguished on the
7 record.

8 Q. Was there any demand or market for
9 logs in that period prior to the Dawson Trail that was
10 simply not satisfied because nobody would go out and
11 cut them and deliver them. Was there any such thing as
12 that, an unsatisfied demand?

13 A. I can't think of any particular
14 instance.

15 Q. Just one final point. When you were
16 shown the Dawson notes which is Exhibit 1854, Mr.
17 Freidin read to you from the page marked 14 in the
18 upper righthand column, which is the second sheet in
19 the exhibit, and he began with the passage:

20 "I want to have lands for farms reserved
21 for your own use so that the white man
22 cannot interfere with them."

23 Could you expand or clarify that a little
24 bit. Was that supposed to be a reference to the
25 reserves?

1 MR. WAISBERG: A. Yes. One of the most
2 important category of reserves was farming reserves.

3 Q. And what was the intention when that
4 discussion was taking place that this is an evidence
5 of, what was the intention in terms of the land that
6 would be available for agriculture on these reserves;
7 was it small garden plots that was in mind, or was it
8 large-scale farming operations, or what, what are we
9 looking at when we see this kind of reference?

10 A. We're seeing a much desire to
11 increase substantially the farming operations on
12 reserve and with that would go the fact that the
13 reserves that would be chosen as farming reserves would
14 be very good lands.

15 Q. And was there any promise about the
16 quality of the lands or the amount for farming
17 purposes?

18 A. The documents regarding the
19 interpretation on that point vary. For example, in
20 1875 Mr. Dawson in writing subsequent reports said that
21 there was no specific promise made but that the Indians
22 would be happy to have one third to half of their
23 reserve lands as farming reserve lands fit for farming.

24 However, there is another document dated
25 from 1884 from a surveyor who, on asking the Indian

1 agent Robert Pither, who was a signatory of the Treaty,
2 and the other Indian agent George McPherson, who was
3 also a signatory, whether or not the reserves should be
4 fit for farming, Mr. Vaughan stated that after his
5 conversation with these gentlemen he was of the opinion
6 that it was their opinion that the reserves that he
7 should set aside should contain entirely arable land.

8 Q. And just so we know exactly the
9 context, when this exhibit was created in 1873 at the
10 time of the Treaty negotiations, there was at that time
11 no identification of the actual reserves, the actual
12 reserves, it was still not known where exactly they
13 would be and they hadn't been exactly selected; is that
14 right?

15 A. They hadn't been exactly selected --
16 or, pardon me, they hadn't been exactly set aside.
17 Some Chiefs stated that they had selected locations but
18 their precise boundaries had not been set aside.

19 Q. Just one last point. You referred in
20 answer to a question from Mr. Freidin to a report
21 concerning fisheries which you held up at that point
22 and I think you were talking about some figures that
23 appear there, and I think you may have referred to it
24 in direct examination as well.

25 So my suggestion is that it be marked as

1 an exhibit and I am going to so request. I think we
2 may have only one copy here.

3 MR. WAISBERG: We have a spare.

4 MR. HOLTZKAMM: (handed)

5 MR. COLBORNE: I would have to undertake
6 then to provide some additional copies, but I would ask
7 that this be accepted as an exhibit. The title is:
8 Rainy River Sturgeon and Ojibway Resource and the Fur
9 Trade Economy, reprinted from the Canadian Geographer,
10 1988. (handed).

11 MADAM CHAIR: Thank you, Mr. Colborne.
12 This will become Exhibit 1856.

13 ---EXHIBIT NO. 1856: Document entitled: Rainy River
14 Sturgeon and Ojibway Resource and
15 the Fur Trade Economy, reprinted
from the Canadian Geographer,
1988.

16 MR. COLBORNE: And that is my
17 re-examination.

18 MADAM CHAIR: Thank you very much, Mr.
19 Colborne.

20 And thank you very much, Mr. Waisberg and
21 Mr. Holtzkamm. We appreciate you giving your evidence
22 to the Board. Thank you very much.

23 MR. HOLTZKAMM: Thank you.

24 MR. WAISBERG: Thank you.

25 MADAM CHAIR: Mr. Colborne, we will be

1 back here Monday.

2 MR. COLBORNE: Yes.

3 MADAM CHAIR: And we begin at 1:30 and we
4 will begin to hear the evidence of your witnesses in
5 Panel 2.

6 MR. COLBORNE: That is my expectation. I
7 hope that now that Mr. Waisberg and Mr. Holtzkamm have
8 brought us up to 1950 that the witnesses of Panel 2 can
9 bring us into the present. Thank you.

10 MR. FREIDIN: I was wondering, Madam
11 Chair, whether if we have three days set aside -- I
12 guess two and a half days.

13 MADAM CHAIR: Monday, Tuesday, Wednesday.

14 MR. FREIDIN: Right. If we do finish
15 Panel No. 2 early, my cross-examination -- if you take
16 a day, Don, and I'm very short in my cross-examination,
17 will we be starting Panel 3 or what kind of timing are
18 we looking at?

19 I understand Mr. Colborne thinks about a
20 day. If he's a day and I have half a day, I might very
21 well finish Tuesday evening and I'm just wondering --

22 MR. MARTEL: It's a short day Monday,
23 don't forget.

24 MR. FREIDIN: I know, but if he takes
25 half a day, if he takes you know until 1:30 or two

1 o'clock, I may finish.

2 MR. GILLESPIE: I may have some questions
3 on Panel 2 as well.

4 MR. MARTEL: You still could be done by
5 Tuesday night, is what you're saying, Mr. Freidin,
6 regardless?

7 MR. FREIDIN: Outside chance. I just
8 wanted to know if you are going to go ahead with 3.

9 MADAM CHAIR: We discussed this at the
10 scoping session. Are these witnesses coming from --

11 MR. COLBORNE: All over the place.

12 MADAM CHAIR: Your witnesses in Panel 3
13 are coming. How many witness are there in Panel 3?

14 MR. COLBORNE: At last count -- I don't
15 want to burden the Board with my scheduling problems,
16 or at least not the details of them, but there are some
17 problems, because of distances, and because of
18 commitments that the Treaty 3 Chiefs have at the All
19 Ontario Chiefs Conference which happened to be
20 scheduled for the week beginning June 3rd.

21 So I am working hard on this, but the
22 answer to Mr. Freidin's question would be, I believe I
23 will have witnesses to begin the Panel 3 evidence on
24 Wednesday if we have concluded the Panel 2 evidence by
25 the end of the day on Tuesday.

1 MADAM CHAIR: All right. Thank you, Mr.
2 Colborne.

3 MR. FREIDIN: Good.

4 MADAM CHAIR: All right. We will adjourn
5 now and we will return on Monday.

6
7 ---Whereupon the hearing was adjourned at 12:20 p.m.,
8 to be reconvened on Monday, May 27th, 1991,
9 commencing at 1:30 p.m.

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